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International covenant
on civil and
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HUMAN RIGHTS COMMITTEE

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT

Fourth periodic reports of States parties due in 1995

Addendum

COLOMBIA*

[9 July 1996]

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* For the third periodic report submitted by the Government of Colombia, see CCPR/C/64/Add.3; for its consideration by the Committee, see CCPR/C/SR.1136-1139 and the Official Records of the General Assembly, Forty-seventh session, Supplement No. 40 (A/47/40, paras. 350-394). For the comments adopted by the Committee at the end of the consideration of that report, see CCPR/C/79/Add.2.

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* The annexes may be consulted in the Centre for Human Rights.

FULFILMENT OF OBLIGATIONS UNDER THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

Article 1

Paragraph 1

1. Exercise of the right of peoples to self-determination. The 1991 Constitution recognizes the right of peoples to self-determination, as one of the foundations of Colombia's international relations, in article 9:

> "Article 9. The foreign relations of the State are based on national sovereignty, on respect for the self-determination of peoples and on the recognition of the principles of international law accepted by Colombia."

2. The recognition of this principle of law and international relations in a provision of the Constitution means that the Government of Colombia assumes political and legal obligations at the international level to support peoples who have not been able to exercise their right to self-determination, in accordance with the Charter of the United Nations, and has in fact done so.

3. In Colombia, sovereignty lies with the people. The 1991 Constitution furthermore strengthened the right of the Colombian people to self-determination by recognizing that sovereignty resides in the people and that public power emanates from the people.

> "Article 3. Sovereignty resides exclusively in the people, from whom public power emanates. The people shall exercise it directly or through their representatives under the terms established by the Constitution."

4. Pursuant to the above article, the 1991 Constitution sets forth, in article 103, the constitutional mechanisms providing the Colombian people with the means for democratic participation in public affairs and guaranteeing their access to the various forms of participation:

> "Article 103. The means for the people to participate in the exercise of their sovereignty are: the vote, the plebiscite, the referendum, consultation of the people, the open council meeting, the legislative initiative and the removal of officials.
>
> The law shall regulate these matters.
>
> The State shall contribute to the organization, promotion and training of professional, civic, trade union, community, youth and charitable or public-purpose non-governmental associations, without detriment to their autonomy, so that they may constitute democratic mechanisms for representation in the various bodies established for the purpose of participation in, consultation on, and control and supervision of the conduct of public affairs."

5. Various laws have been enacted under the Constitution to give effect to article 103, including:

> Act No. 130 of 1994 or Basic Statute of Political Parties and Movements (annex 17). Under this enactment, all Colombians have the right to form political parties or movements, and the political parties and movements are recognized as having legal personality, can put forward candidates for any elective office, can finance their political campaigns with State funds or private funds up to certain quantitative limits, can give publicity to their ideas and proposals and are required to account for their economic management;
>
> Act No. 131 of 1994, which regulates voting for political programmes and permits the exercise of the right of removal of public officials elected by the people (annex 18);
>
> Act No. 134 of 1994 on mechanisms for citizen participation (annex 19), which regulates the legislative and normative initiatives of the people, the referendum, consultation of the people at the national, departmental, district, municipal and local levels, the removal of public officials elected by the people, the plebiscite and the open council meeting.

6. The creation of forums for participation in administrative management at the national and local levels is provided for in various laws, such as Environment Act No. 99 of 1993; Development Plan Organization Act No. 152 of 1994; National Health and Social Security System Act No. 100 of 1993; Education System Reform Act No. 115 of 1994; Afro-Colombian Communities (Rights, Participation and Development) Act No. 70 of 1993; and Decrees Nos. 36 of 1992 and 1809 of 1993 on National Indigenous Policy.

7. The National Economic and Social Policy Council (CONPES) approved the following programmes to be undertaken or strengthened with the participation of civil society (CONPES document No. 2779, May 1995):

(a) Publicity for the mechanisms of political participation contained in Act No. 13 of 1990 and other mechanisms, through the Citizen Participation Fund (Ministry of the Interior, Office of the Presidential Adviser for Institutional Development, National Registry Office);

(b) Establishment of the Inter-Agency Committee for Participation (CIP) under the Ministry of the Interior;

(c) Establishment of the "PARTICIPAR" database on the legal framework for participation; wide publicity for the relevant instruments (Office of the Presidential Adviser for Institutional Development, Ministry of the Interior);

(d) Promotion by each ministry of forums for participation, to be coordinated by the Inter-Agency Committee for Participation (CIP);

(e) Programmes to develop the capacities for participation of citizens and of civil organizations and their leaders (Ministry of the Interior, Social Solidarity Network, Citizen Participation Fund);

(f) Implementation of the "Done Deal" Programme with the aim of promoting respect for citizens' rights by public officials and their discharge of the mandates given to them in the participatory process (Office of the Presidential Adviser for Institutional Development);

(g) Preparation, in consultation with civil organizations, of the statutory framework for their participation, in accordance with articles 2, 39, 5, 103, 270 and 355 of the Constitution (Ministry of the Interior, Offices of the Presidential Adviser for Social Policy and of the Presidential Adviser for Institutional Development);

(h) Promotion of citizens' watch committees and their coordination with the public supervisory bodies (Ministry of the Interior);

(i) Definition of methodologies for assessing citizens' participation and the governability and legal foundation of the Colombian political system; holding of annual seminars to evaluate the policies of participation and citizens' exercise of their rights in this area (Ministry of the Interior, Citizen Participation Fund).

8. The rapid political and economic changes in the country and the persistence of phenomena of social conflict require a great effort to be made by the State and civil society to apply the constitutional reforms and the laws enacted to give effect to them. For this purpose, there is a broad, democratic and participatory legal base and a political commitment on the part of State institutions to disseminate the laws and to promote and defend the rights set forth in them.

9. Furthermore, the Constitution states in article 1:

> "Article 1. Colombia is a social State governed by law and organized as a unitary, democratic, participatory and pluralistic Republic decentralized with autonomous territorial units. It is founded upon respect for human dignity, the work and solidarity of the individuals constituting it and the primacy of the general interest."

10. The Constitution and the laws in force today thus guarantee the Colombian people the exercise of their right to self-determination.

11. The Ministry of the Interior notes that the concept of "self-determination" is not embodied in the special legislation for indigenous ethnic minorities; rather, the term "autonomy" is used, this being understood to mean the right of Colombia's indigenous peoples to their own ethnic and cultural identity, their own language and their own territory in communal tenure, the right to choose their own authorities, to be governed by their own rules and procedures and to follow their own customs and practices, and the right to the future enjoyment of fiscal, political and administrative autonomy in the management of territorial entities set up under article 320 of the Constitution.

12. The Colombian Constitution provides for the autonomy of the indigenous populations, clearly distinguishing it from the concept of self-determination, as follows:

Autonomy:

(1) Recognition of the ethnic and cultural diversity of the Colombian nation (art. 7);

(2) Recognition of the languages and dialects of the ethnic groups, in their respective territories (art. 10);

(3) Recognition of a special national electoral district, which elects two senators for the indigenous communities (art. 171);

(4) Creation of a special electoral district for political minorities and ethnic groups to ensure their participation in the Chamber of Representatives (art. 176);

(5) Formation of autonomous indigenous territorial entities (art. 329 in concordance with art. 1);

(6) Establishment of special jurisdiction to be exercised by the authorities of the indigenous peoples, within their territorial limits and in accordance with their own rules and procedures, provided that these are not contrary to the Constitution and the laws of the Republic (art. 246).

13. Self-determination of peoples. Article 9 of the Constitution clearly defines the scope of the concept of self-determination of peoples, considering it within the context of the foreign relations of the Colombian State, so that it implies recognition of another State's sovereignty.

14. The right of peoples to self-determination, as understood in international law, also entails permanent sovereignty over natural resources as a basic element. Endorsing both autonomy and self-determination would run counter to the Colombian constitutional order, under which wealth and the resources of the subsoil belong solely and exclusively to the nation.

Paragraph 2

15. Free disposal of natural resources. Colombia's territorial sovereignty is established by articles 101 and 102 of the Constitution, which state that the borders of Colombia are those defined in international treaties approved by Congress and duly ratified by the President of the Republic, and those determined by arbitral awards in proceedings to which Colombia is a party. Also part of Colombia are the subsoil, the territorial sea, the contiguous zone, the continental shelf, the exclusive economic zone, the airspace, the segment of the geostationary orbit and the electromagnetic spectrum and space in which it operates, in accordance with international law or with the laws of Colombia in the absence of international regulations. The territory and public assets forming part thereof belong to the nation.

16. Natural resources are protected in various constitutional provisions and particular reference should be made to the following articles:

> "Article 80. The State shall plan the management and utilization of natural resources in such a way as to guarantee their sustainable development, conservation, restoration or replacement.
>
> In addition, it shall prevent and control the factors contributing to environmental degradation and impose legal sanctions and demand reparation for any damage caused.
>
> Furthermore, it shall cooperate with other nations in the protection of ecosystems located in border areas.
>
> Article 332. The State shall be the owner of the subsoil and of non-renewable natural resources, without prejudice to rights acquired or perfected in accordance with prior laws.
>
> Article 360. The law shall determine the conditions for the exploitation of non-renewable natural resources, as well as the rights of territorial entities to them.
>
> The exploitation of a non-renewable resource shall produce revenue for the State in the form of royalties, without prejudice to any other entitlement or compensation that may be agreed on.
>
> The departments and municipalities in whose territory non-renewable natural resources are being exploited, as well as the sea and river ports through which those resources or products derived therefrom are transported, shall be entitled to a share of the royalties or compensation."

Paragraph 3

17. Self-determination of peoples in trust territories. Although Colombia does not at present have responsibility for the administration of non-self-governing or trust territories, it has always promoted the right of peoples to self-determination within the General Assembly and specialized agencies of the United Nations.

Article 2

Paragraph 1

18. Guarantee of human rights and guarantee of non-discrimination. As indicated in the previous report, the International Covenant on Civil and Political Rights was signed by the Government of Colombia on 21 December 1966 and incorporated into national legislation by the Congress of the Republic through Act No. 74 of 26 December 1968; the instrument of ratification was deposited on 29 October 1969. The Covenant entered into force for Colombia on 23 March 1976, in accordance with article 49, whereby the Covenant was to enter into force three months after the date of the deposit of the

thirty-fifth instrument of ratification or accession. The guarantee of human rights is set forth in the second paragraph of article 2 of the Constitution, which refers to the goals of the State and the role of the public authorities:

> "_Article 2_. (...) The authorities of the Republic shall be established to protect the lives, dignity, property, beliefs and other rights and freedoms of all residents of Colombia and to secure the fulfilment of the social duties of the State and of private individuals."

19. Having been incorporated into the Constitution and national legislation, the rights covered by the Covenant are thus enforceable through the remedies and mechanisms established by the Constitution and the law and on the basis of the rule stated in article 93 of the Constitution, whereby instruments of international human rights law and of international humanitarian law form, together with the Constitution itself, a constitutional body of law:

> "_Article 93_. International treaties and agreements ratified by the Congress that recognize human rights and prohibit their restriction during states of emergency shall take precedence over internal law. The rights and duties set forth in this Constitution shall be interpreted in accordance with the international human rights treaties ratified by Colombia."

20. Regarding this article of the Constitution, the legal literature acknowledges that the 1991 Constituent Assembly was wrong, in the technical legal sense, to refer to treaties ratified by Congress, since in fact Congress approves treaties by enactments and then the President, through the State's diplomatic agents, deposits the instrument of ratification or accession. It would have been more correct to say "ratified by the State".

21. Article 94 of the Constitution provides as follows:

> "_Article 94_. The enunciation of the rights and guarantees contained in the Constitution and in international agreements in force shall not be construed as negating other rights inherent to the human person which are not expressly referred to therein."

The recognition of human rights thus goes very much further than the texts of domestic and international positive law.

22. In addition, article 13 of the Constitution states:

> "_Article 13_. All persons are born free and equal before the law, shall be given equal protection and treatment by the authorities, and shall enjoy the same rights, freedoms and opportunities without any discrimination on grounds of sex, race, national or family origin, language, religion, political opinion or philosophy.
>
> The State shall promote the conditions necessary to ensure that equality is real and effective and shall adopt measures in support of groups that are discriminated against or marginalized."

23. Some of the most significant recent enactments intended to provide effective safeguards of the civil and political rights of Colombians are summarized below:

(a) Act No. 24 of 15 December 1992 (annex 20) deals with the organization and functioning of the Office of the Ombudsman and establishes the Advisory Council of the Office of the Ombudsman, which is chaired by the Ombudsman and includes the chairmen and vice-chairmen of the Congressional human rights commissions, one representative of the National University of Colombia and one of the private universities, a nominee of the National Federation of Government Representatives of Colombia and four representatives of non-governmental organizations (NGOs) working in the field of the protection and promotion of human rights;

(b) Act No. 40 of 19 January 1993 (annex 21), which approved the National Statute against Abduction and encouraged the institutionalization of publicity campaigns aimed at preventing and combating the offence of abduction. Decree No. 1405 of 1 September 1995 (annex 22) established the Presidential Programme to Combat the Offence of Abduction, which will have the tasks, inter alia, of assisting the National Government in the formulation of an integrated policy designed to combat abduction, working out a plan for monitoring and evaluation in this area, and coordinating the formulation of a communications strategy to promote civic solidarity in the fight against this crime;

(c) Act No. 62 of 1993 (annex 23) restructures the National Police, defines its functions in respect of the protection of the human rights of the people, establishes the Office of National Police Commissioner, a non-uniformed official with responsibility for disciplinary matters relating to the National Police, and sets up the National System of Citizen Participation in Police Affairs;

(d) Act No. 104 of 30 December 1993 provided means for promoting harmonious civic relations and the efficiency of the justice system; called for the authorities to guarantee the free development and free expression and action of social movements and protests by the people which are carried out in accordance with the Constitution and the law; ordered the implementation of a programme of care and humanitarian assistance for the victims of political violence and terrorism; and instructed the Office of the Attorney General of the Nation to adopt and implement a programme for the protection of witnesses in cases of human rights violations, as well as to pursue the programmes of protection already under way. This Act - provisionally in effect until 31 December 1995 - was amended in part and extended by Act No. 241 of 26 December 1995 (annex 24);

(e) Act No. 30 of 1993 - the General Higher Education Act (annex 25) - singles out, among the main objectives of university and technical education, "training in respect for life and other human rights";

(f) By Act No. 171 of 1994, the Congress of the Republic approved Protocol II of 1977 Additional to the Geneva Conventions of 1949 relating to non-international or internal armed conflicts. The instrument of accession was deposited on 14 August 1995. Protocol II entered into force for

Colombia on 16 February 1996. The text of Act No. 171 of 1994 is not annexed, as its substantive provisions are those of Protocol II itself.

24. Programmes for the promotion of citizens' rights. As indicated in Colombia's third report, the National Government launched a governmental human rights programme in 1987 with the establishment of the Office of the Presidential Adviser for Human Rights. This Office has channelled international support and cooperation on the basis of agreements with the United Nations Centre for Human Rights in Geneva, the United Nations Development Programme, and the Governments of the Netherlands, Canada and Italy. The programme provides for the defence, promotion and protection of human rights by means of the reception and handling of complaints submitted by private individuals to the Office of the President of the Republic; human rights information and teaching programmes targeted at educators, State officials (members of the police, the military, judges, prosecutors, labour inspectors, municipal representatives) and at civil society in general; liaison and coordination with NGOs working in various fields; care for the victims of violence, in coordination with humanitarian NGOs such as the Colombian Red Cross; publication of books, magazines, periodicals, videos and posters; and advice to the National Government on a variety of matters relating to human rights and international humanitarian law.

25. In 1993 and 1994, the Office of the Presidential Adviser for Human Rights implemented a wide-ranging project entitled "Consolidation of the Mechanisms for the Protection and Defence of Human Rights at the Local Level", and involving the holding of more than 600 local information workshops. It also disseminated information through the media on human rights and the machinery of protection.

26. The Government's activities were strengthened with the creation of human rights offices or units in the Ministry of National Defence (1994), in the General Command of the Armed Forces (1992), in the Administrative Security Department (1993) and in several of the country's prisons. The Ministry of Defence established the Secretariat for Human Rights and Political Affairs, with branches in military garrisons and police departments throughout the country. One of its functions is to follow up on reports of violations of human rights and international humanitarian law.

27. With support from the Office of the Presidential Adviser for Human Rights, the Office of the Ombudsman and the International Committee of the Red Cross, the subject of human rights has been included in training in all areas and at every level for police officers and members of the armed forces.

28. Pursuant to Act No. 115 of 1994 - the General Education Act (annex 26) - the Ministry of Education is working on the formulation, implementation, monitoring and evaluation of the National "Education for Democracy" Project. This project aims not only to include education for democracy in the basic curriculum as a fundamental, compulsory and cross-disciplinary subject, but also to make it a topic for daily reflection by students, teachers and parents. The plan involves the academic community, NGOs and governmental institutions responsible for the promotion and protection of human rights and aims to ensure that the principles of democracy and human rights are incorporated into the institutional education projects that each educational

establishment must draw up with the participation of the whole educational community (students, teachers, parents, directors, former pupils).

29. The Ministry of Education is mandated under the Constitution to formulate and implement educational programmes specially targeted at indigenous groups, covering basic and vocational education, training of indigenous teachers, and the design and production of teaching materials. Decree No. 2127 of 1992 established the Division of Ethnic Education as part of the organizational structure of the Ministry of Education and defined its functions. Act No. 70 of 1993 strengthened this mandate in respect of the black communities, which are entitled to education according to their needs, history, knowledge, skills and systems of values.

Paragraph 3

30. Judicial remedies for the protection and application of human rights. The judicial remedies for the protection of fundamental human rights are:

(a) The remedy of protection of fundamental rights (*acción de tutela*);

(b) The remedy of habeas corpus;

(c) The remedy of *habeas data*;

(d) The remedy of direct reparation.

These four remedies are judicial remedies, since applications may be filed in the courts, which consider and decide on them in judicial proceedings; and they are effective remedies, since public officials are obliged to comply with the respective judicial decisions, subject to disciplinary measures or, indeed, deprivation of liberty if the official or private individual concerned fails to comply with them.

31. There are various reasons for the existence of different remedies. Under the previous Constitution - that of 1886 - there had been only legislatively created remedies, such as the remedy of habeas corpus instituted and regulated by the Code of Criminal Procedure, and the remedy of compensation created by the Administrative Code for recovery of damages from the State based on its extra-contractual liability. The 1991 Constitution raised habeas corpus (art. 30) and direct reparation (art. 90) to the status of constitutional remedies and created the new remedies of protection of fundamental rights (art. 86) and *habeas data* (art. 15). The first two remedies belong to well-established branches of law, i.e. criminal law and public law or the law of public administration, and have a long legal tradition in Colombia. The 1991 Constitution maintained them as remedies proper to those branches of law. By contrast, the remedy of protection and the remedy of *habeas data* are now two typical constitutional forms of recourse to safeguard human rights. The remedy of protection of fundamental rights may be regarded as a general remedy to secure almost all fundamental rights, except the right to personal liberty - specifically protected by habeas corpus - and the right to privacy - specifically protected by *habeas data*.

The remedy of direct reparation allows residents of Colombia to obtain compensation from the State for wrongful injury caused by acts or omissions of the public authorities.

32. The remedy of protection of fundamental rights, created by the 1991 Constitution, has become the most powerful tool - not to say weapon - of the citizen to protect himself against abuses by the public authorities or by private individuals entrusted with providing a public service. In order to limit the power of the legislature to regulate this remedy, the 1991 Constituent Assembly drew up a quite detailed constitutional rule:

> "Article 86. Any person may apply to the courts, at any time and in any place, through a preferential and summary proceeding instituted by himself or by someone acting on his behalf, for immediate protection of his fundamental constitutional rights whenever any of those rights is jeopardized or threatened by the action or omission of a public authority.
>
> The protection shall consist in an order enjoining the party in respect of whom protection is sought to act or refrain from acting. The decision, which shall be immediately enforceable, may be challenged before the competent judge, who shall in each case refer the matter to the Constitutional Court for possible review.
>
> This remedy shall be applicable only when the affected party has no other available means of legal defence, unless it is used as a provisional means of avoiding irreparable injury.
>
> In no case may more than 10 days elapse between the time of the application for protection and the decision on it.
>
> The law shall establish the cases in which a proceeding for protection can be instituted against private individuals entrusted with providing a public service or acting in a manner that may seriously and directly affect the general welfare and in respect of whom the applicant may find himself in a position of subordination or defencelessness."

33. The remedy of protection was regulated by Decree No. 2591 of 1991, later amended by Decree No. 306 of 1992 (annex 27). The reason why this remedy was regulated by decrees of the President of the Republic and not by enactments of the Congress needs to be explained. The 1991 Constituent Assembly revoked the mandate of Congress that had been elected in 1990 for a four-year term and called for new elections to be held in October 1991 and for a new term of the legislature to begin on 1 December of the same year. To ensure that the 1991 Constitution entering into force on 4 July 1991 would not be kept in abeyance until a new Congress took office, the Constituent Assembly vested special powers in the President of the Republic for the purpose, inter alia, of regulating the right (sic) of protection (transitional art. 5); any decrees issued by the President in the exercise of those special powers were reviewed by a Special Legislative Commission (popularly known as the "little Congress") and that procedure was applied to Decree No. 2591 of 1991. In early March 1996, the Ministry of Justice and Law began work on reviewing experience with the application of the remedy of protection over the past four years,

studying the legislative or constitutional amendments that the experience might suggest, and preparing the appropriate draft legislation.

34. *In Colombia*, the remedy of protection is the mechanism par excellence for safeguarding fundamental human rights. As in other countries which have set up similar mechanisms, lessons have been learned in a gradual process of experimentation by citizens, judges and lawyers and by those who have had to implement decisions on protection. Many injustices and abuses for which there had previously been no remedy can no longer be committed, since the decisions on protection have "tightened up" on arbitrariness and have obliged the public administration to take notice of persons applying for protection to curb injustice. There is no denying also that there has been abuse of the remedy and that it has been used for purposes not appropriate to a means of recourse intended to protect human rights.

35. The remedy can also be used to prevent the violation of rights, and not only for protection when violations have already occurred. It is available in Colombia to safeguard not only the fundamental rights referred to in the relevant chapter of the Constitution, but also all the fundamental rights which do not appear there or anywhere else in the Constitution, or in national or international instruments of positive law. In addition, protection is available against judicial decisions and judgements, with some limitations. Decisions on protection are binding on the public servants and private individuals to whom they apply and peremptory inasmuch as judges may punish contempt by imposing a penalty of up to six months' imprisonment and a fine of 20 times the minimum monthly wage on any person failing to comply with an order handed down by a judge on the basis of the legal provisions governing protection, without prejudice to any criminal proceedings that may be brought for fraudulent performance or non-performance.

36. In all, 65,000 instruments of protection had been transmitted to the Constitutional Court between the time it began its work and June 1995, a significant figure given that all proceedings for protection must be referred to the Court for possible review. According to a recent study published by the Ministry of Justice, "The remedy of protection has been an effective means of safeguarding the fundamental rights of individuals. No other innovation of the 1991 Constitution has had such social importance as the remedy of protection: it represents the most significant part of the reform initiated by the members of the Constituent Assembly in 1991. Its importance is recognized by applicants, judges and, in general, the national legal community. These features make the remedy of protection an irreversible addition to the country's legal panoply" (Republic of Colombia, Ministry of Justice and Law, Incidencia social de la acción de tutela, Document Series No. 22, Ministry of Justice, Santafé de Bogotá, Colombia, February 1996, 206 pp. This academic research was carried out by the Centre for Legal Studies of the Universidad de los Andes, annex 27 bis.)

37. The remedy of direct reparation is the other general judicial remedy and is very effective in cases where reparation or compensation is sought for negligence in the public service. It existed before 1991 on the basis of the legal provisions of the Administrative Code, although differently named, and was used frequently. The 1991 Constitution made it a constitutional remedy under article 90:

> "Article 90. The State shall be liable to pay compensation for any wrongful injury attributable to it when caused by acts or omissions by the public authorities.
>
> In the event that the State is ordered to pay damages for any such injury sustained as a consequence of wilful or gross misconduct by one of its agents, the former shall be able to proceed against the latter to recover the said damages."

38. The main limitation of the remedy of reparation is that it ceases to be available two years after the events that caused the wrongful injury. However, the remedy has undoubted advantages for private individuals as it is sufficient for them to demonstrate the occurrence of the events, the injury sustained and the legal grounds for suing the State to obtain appropriate compensation, since the State bears strict liability and there is no need for the identity or liability of the public official who caused the injury to be determined in criminal or administrative proceedings. To give an idea of the magnitude of the penalties applicable under administrative law, it may be noted that, in 1995, the Ministry of Defence, which has responsibility for the armed forces and the police, was ordered to pay compensation in cases of misconduct in office amounting to Col$ 12,024 million and made settlements, both in and out of court, with claimants in other cases amounting to Col$ 18,354 million; it therefore had to pay a total of Col$ 30,378 million (about US$ 30 million). No statistics are available to determine what proportion of those compensation payments were made for human rights violations (the lack of such records is in the process of being remedied). However, that proportion may be estimated at between 20 and 30 per cent of the damages awarded against or agreed to by the Ministry of Defence.

39. Habeas corpus and habeas data will be discussed extensively in the sections dealing with the articles of the Covenant that relate directly to the rights protected by these remedies.

40. As can be seen, Colombians have a valuable set of judicial remedies directly related to the prevention of violations of their fundamental human rights and to redress for injury caused by such violations as may occur. However, it should not be forgotten that there are also the usual criminal and disciplinary remedies which make it possible to punish public servants whose conduct in breach of human rights may be regarded as criminal or disciplinable. Furthermore, criminal proceedings can also be brought to punish private individuals whose criminal acts may be regarded as having infringed the rights and freedoms of residents of Colombia.

Article 3

41. Equality between men and women in the enjoyment of human rights. In the last few decades, the social status of women in Colombia has undergone significant changes, as reflected in their opportunities for employment, their improved access to education, control of fertility and equality before the law. As far as equality between men and women is concerned, there is full

equality in the formal legal framework; real equality is still a target, relating not only to socio-economic disparities, but also to cultural factors that men, and frequently women themselves, assume to be a natural part of the functioning of society.

42. The framework within which the State is working to achieve equality comprises:

(a) The 1991 Constitution, the laws enacted pursuant to it, and prior laws, all of which have given shape to the gradual achievement of equality before the law;

(b) The definition of institutional structures, from 1990 onwards, for the formulation and implementation of policies of gender equality;

(c) Women and gender policies and programmes, which from 1990 onwards began to be formulated and shaped by the National Economic and Social Policy Council (CONPES);

(d) The National Development Plan incorporated the gender dimension into decisions on the investment of State resources for economic and social development.

43. Legislation for equality. Equality before the law in Colombia has made great strides. Laws have been enacted to regulate the participation of women in areas that are fundamental for the development of society as a whole: as citizens, in political law; as spouses and mothers, in civil law; as workers, in labour law; and, in criminal law, the aim has been to protect their physical integrity. The first legal and political measures aimed at creating conditions of equality for women were taken in the 1930s, when women were recognized as having proprietary rights in marriage, given civil capacity and entitled to witness all juridical acts, granted the right to higher education and paid work, allowed to exercise parental authority in respect of their natural children, granted the right to apply for alimony and were able to benefit from the establishment of the system of paternity search. In 1957, women became citizens enjoying the full exercise of their rights, including the right to be elected to positions of political responsibility and to perform public duties involving the exercise of authority and jurisdiction. The 1957 national plebiscite gave them the right to vote and confirmed their equal political rights. The labour legislation upheld the principle of equal remuneration for equal work in 1962 and this was regulated in 1981 with measures taken to provide equal opportunities in training and employment, equal remuneration, free choice of occupation and employment, protection of health, social security and maternity protection. The legislation on maternity protection established paid maternity leave for a period of 8 weeks (1950), later increased to 12 weeks (1990), and the right to time for breast-feeding during the first six months of the child's life (1967). Successive laws established the equal rights of men and women in respect of property and the exercise of parental authority, divorce for persons joined in civil marriage, with the same grounds for divorce being applicable to men and women, and the sharing of property and award of child custody, rights that were provided for in the 1991 Constitution for all married persons, including those married in the Catholic Church.

44. Act No. 51 of 1981 incorporated the Convention on the Elimination of All Forms of Discrimination against Women into national legislation. Legislation was adopted in 1982 on social security for women, and it was extended to employees in domestic service in 1988 and supplemented in 1993 by the creation of the country's Integrated Social Security System. The offences of forcible carnal knowledge and violent sex acts are penalized, without distinction as between men and women, under the Criminal Code (1980).

45. Equality before the law for women was definitively secured with the promulgation of the 1991 Constitution, which expressly prohibits discrimination on grounds of sex and promotes affirmative action to allow for greater participation of women in public affairs. Act No. 82 of 1993 - the Act on Support for Female Heads of Household (annex 28) - was promulgated pursuant to the Constitution and the Congress of the Republic has been debating (without result as yet) the enactment of legislation on violence against women. The Constitutional Court has made rulings clarifying the content of some laws aimed at ensuring equality, which are of great importance and scope. Mention should be made of the one relating to the recognition of a woman's domestic work as a contribution to the de facto community property held by permanent partners. The remedy of protection of fundamental rights is an instrument of considerable scope and has enabled progress to be made in realizing the right of pregnant adolescents to continue in formal education and the right to sex education for children, the Ministry of Education being mandated to incorporate it into the primary school curriculum. Proceedings to secure protection have, in actual fact, been instituted by women.

46. Colombian legislation is now among the most advanced in Latin America as regards equality between the sexes. The individual and collective action of Colombian women has highlighted the kinds of disadvantage suffered by women in the economic, legal, cultural and political fields, as well as the various forms of discrimination and their consequences. Women's participation in the drafting of a new constitution contributed in an important way to ensuring that equal protection of the law for men and women would be embodied in the 1991 Constitution. The State has expressed a willingness, at the formal legal level, to remedy situations of discrimination and has provided society with a framework of laws that will promote the further advancement of women, as indicated in Colombia's report to the Fourth World Conference on Women (annex 29).

47. While the legal framework is the basis for achieving equality, real achievements are possible only by ensuring its applicability and coverage. Efforts to implement the legislation are faced with obstacles that stem from an inefficient legal system and, for women in particular, compliance is subject to varying conditions of applicability depending on their socio-economic status, the levels of risk (as in the case of pregnancy tests or declarations of civil status to obtain employment), as well as on the cultural environment and their own knowledge of the law.

48. Work and income. Over the last few decades, Colombian women have been increasing their participation in productive activities more rapidly than men, with the result that the sex differential has tended to decrease with time. Women represented 38.6 per cent of the economically active population in 1980 and 42.6 per cent in 1991. This trend is the product of major changes in the

age structure of the labour force. The educational level of women in the economically active population in 1990 for the four main cities was very similar to that of men, average school attendance being 8.7 years for men and 8.0 for women. The greater participation of women in the labour force reflects the higher levels of education.

49. Two elements characterize the dynamics of female employment in Colombia. The first is the rapid increase in the number of women in the labour force and the attainment of advantageous positions for a female élite in the formal sector of the economy. The second is the rapid inflow of a large number of women into paid employment on more disadvantageous terms, mostly in temporary and poorly paid jobs. In 1990, one out of every five Colombian households had a female head; the female head of household was earning Col$ 0.62 for each peso earned by a male head of household.

50. Regulatory framework:

(a) The Constitution: articles 25, 43 and 53, which provide that every one has the right to work under decent and fair conditions, as well as the non-renounceable right to social security; workers have equal opportunities for employment without discrimination and there exists the right to maternity protection; provision is made for special support for female heads of household;

(b) Act No. 11 of 1988: special social security scheme for female employees in domestic service earning less than the minimum legal wage (annex 30);

(c) Act No. 50 of 1990 on maternity protection (annex 31) provides for 12 weeks' paid maternity leave (the mother may cede the first week to her spouse or partner); prohibition of the dismissal of a pregnant or nursing woman, and compensation and fines for non-compliance with the regulations;

(d) Substantive Labour Code: articles 236 et seq. establish occupational health standards for women, including pregnant women;

(e) Decision No. 001531 of 1992 of the Ministry of Labour and Social Security on women's right to a working environment and living conditions that do not affect their health or fertility;

(f) Act No. 100 of 1993 set up the Integrated Social Security System to provide health care, pensions and supplementary social services;

(g) Act No. 119 of 1994 on the restructuring and modernization of the National Apprenticeship Service (SENA);

(h) Act No. 51 of 1993 on Support for Female Heads of Household;

(i) Act No. 160 of 1994 on the System of Agrarian Reform and Peasant Rural Development;

(j) Decree No. 1398 of 1990 pursuant to Act No. 51 of 1981, which stipulates that there shall be no discrimination against women in employment;

(k) Ministry of Labour decision No. 391 of 1990, which prohibits employers from demanding a pregnancy test as a condition for admission to or continuation in employment.

51. Health. The conditions of health of Colombian women have improved markedly in the last few decades, although considerable problems are still being encountered. Principal health needs relate to the socio-demographic structure of the population, general living conditions and the characteristics of the health-care system. Advancement in the process of demographic transition in Colombia has been accompanied by a process of epidemiological transition, as reflected in the age-specific mortality rate. The fall in population growth, accompanied by a drastic reduction in the birth rate in urban and rural areas, has contributed to the lowering of maternal and child mortality. These demographic features are bound up with general living conditions, which reveal housing, public-health and nutritional deficiencies, mostly affecting women and children, especially in rural and poor urban areas.

52. Regulatory framework:

(a) The 1991 Constitution establishes health care as a public service to be managed by the State. Regarding women and the family, it establishes the right of the family to decide freely and responsibly on the number of children it should have, and provides for protection for pregnant and nursing women; food allowances for women who are unemployed or abandoned and who are heads of household; free treatment in State health-care institutions for children under one year of age not covered by the social security system; protection of older persons through social security and food allowances; and support for the disabled;

(b) Act No. 50 of 1990 on protection for mothers and nursing women;

(c) Act No. 100 of 1993 on the Integrated Health and Social Security System;

(d) Act No. 60 of 1993 on the decentralization of the health services and transfer of the resources of the nation;

(e) Act No. 70 of 1993 on the implementation of the right to health of the Black communities and of female heads of household in such communities.

53. Education. Colombian women have significantly improved their educational status to reach levels very close to those of men. Women still show rates of illiteracy that are slightly higher than for men (12 per cent as against 11.5 per cent in 1985), but the reduction in illiteracy was markedly greater among women than among men relative to the 1968 census (28.9 per cent as against 25.2 per cent). In rural areas, female illiteracy is about 23 per cent.

54. With regard to the country's pyramidal socio-educational structure, fewer women than men have gained entry to higher education (6.2 per cent as against 7 per cent), but there are more females than males in secondary

education (33.7 per cent as against 30.8 per cent) and equal numbers in primary education (50 per cent). The proportion of persons who do not manage to acquire any degree of formal education is very similar for both sexes (around 11 per cent).

55. As to educational performance, the Colombian system achieves close to "normal" standards, failing one fifth of pupils in first grade and 6 per cent of those in fifth grade, with a 12 per cent drop-out rate for primary education. The drop-out rate is lower for females than for males, this being influenced by the work factor, although, in rural areas and in the poorest homes, girls perform domestic work from the third grade of the primary level.

56. Regulatory framework:

(a) The 1991 Constitution, under which the State, society and the family are responsible for education; education is compulsory between 5 and 15 years of age, up to ninth grade, and free in State institutions. Education is defined as a person's right and as a public service with a social function;

(b) The General Education Act of 1993, which covers education for democracy and equality;

(c) The National Sex Education Plan, under which sex education, including aspects of gender equality, is compulsory;

(d) The Minors' Code, which calls for the Ministry of Education to set up a national programme to help primary school drop-outs catch up and re-enter the system without major trauma;

(e) The Constitutional Court: case law on the right to receive sex education in school and the right of pregnant adolescents to continue in formal education.

57. Violence against women. The Survey on Prevalence, Demography and Health in 1990 revealed a high level of ill-treatment of women and children. This situation reflects a general climate of violence in the country and the stereotypical thinking that ill-treatment of women is normal. The initial findings of specific research suggest that unemployment and greater poverty of households are causing violence in the family to increase.

58. The phenomenon of the sexual exploitation of women, young persons and children of both sexes is commonly associated with drug abuse and crime, thus multiplying the risks to the lives, health and security of those concerned. It gives rise to serious problems of social invisibility and moral insensitivity.

59. Regulatory framework:

(a) Act No. 51 of 1981 on the elimination of all forms of discrimination against women considers violence and prostitution as forms of discrimination;

(b) Prostitution is not punishable in Colombia and does not constitute an offence, but its actual regulation is left to the departmental assemblies and town councils;

(c) The 1991 Constitution prohibits slavery, servitude and traffic in persons, and secures freedom of profession or occupation;

(d) The Criminal Code imposes sanctions for sexual intercourse with minors under 14 years of age, procurement and international traffic in women and minors under 14;

(e) The National Police Statute (Act No. 62 of 1993) seeks to control the levels of violence, arbitrariness and corruption that have characterized its relations with the world of prostitution;

(f) Approval by the Executive of the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women, which has been submitted to Congress for incorporation into national legislation;

(g) Approval by the Senate of the Republic of a bill on the prevention and punishment of violence within the family, which is now pending before the House of Representatives.

60. Socio-political participation. Colombia is in the process of redefining its model of democracy, passing from the representative model to the participatory model. Participation following this model is guaranteed under the Constitution not only by the creation of new forums, especially at the regional and local levels, but also by the advances made in affirmative action to ensure the adequate and effective participation of women at decision-making levels in the public administration.

61. The participation of women in presidential and parliamentary elections has historically been lower than that of men. Although women constitute half of the electorate, 64 per cent did not vote in the 1991 parliamentary elections.

62. During the 1982-1986 presidential term, 12 women were appointed as deputy ministers and 2 as ministers, and a good number of women took up high-level posts in the executive branch. In 1988, 1 per cent of high-level Government posts, 35 per cent of advisory posts and 31 per cent of executive posts were held by women. In 1992, 7 per cent of ministers and deputy ministers were women.

63. Since 1988, mayors have been elected by popular vote. For this period, 58 out of 200 female candidates were elected. In 1990 the number rose to 65, or 6 per cent of the 1,013 mayors elected.

64. Women hold 7 per cent of the seats in the Senate and 6.9 per cent of those in the House of Representatives. In the departmental assemblies, they represent 10.6 per cent of the deputies. In the municipal councils, their

level of representation has never been more than 8.3 per cent. Women's representation on the local administrative boards, which are forums for citizen participation in local planning and the formulation of investment plans, is no more than 15 per cent.

65. No woman served in 1991 in the highest posts (president or vice-president) in the Constitutional Court, the Council of State or the Supreme Court. No woman has achieved that distinction in the history of the Supreme Court and only three women have done so in the Council of State. In 1993, there was one woman in the Supreme Council of the Judiciary. The female presence has been greater among officers of the courts: 18.5 per cent in the Supreme Court and 33 per cent in the Council of State. Women's participation as judges is increasing: 81 per cent in family courts, 1 per cent in civil courts and 25 per cent in labour courts. In the Ministry of Foreign Affairs, women account for about 50 per cent of high-level and professional posts, but only 6.8 per cent of ambassadorial posts. Overall, this means that the higher the ranking, the lower the number of women.

66. Women represent about 50 per cent of all participants in political party conventions, but are very rarely appointed to leadership posts. The Liberal Party has one woman in the national leadership and the Conservative Party none.

67. In the trade unions, women have increased their representation to 25.5 per cent of the membership in the country's four major departments (1990).

68. In the cooperative sector, women accounted for two per cent of the members (1987), mainly in cooperatives providing mutual aid and services. In community-based organizations, female participation is very low: in the case of Bogotá (1988), it was only 21 per cent, women being employed largely in secretarial positions; 11 per cent served in the office of the board chairman.

69. The country has 13 second-level national peasant organizations. Women work in most of these organizations. Two of them are entirely women's organizations.

70. Regulatory framework:

(a) The 1991 Constitution: article 13 provides for political and civic participation, without discrimination on grounds of sex; article 40 guarantees adequate and effective participation of women at decision-making levels in the public administration;

(b) Act No. 152 of 1994, the Development Plan Organization Act, provides for the representation of women in the National Planning Council and in the departmental and municipal councils.

71. Institutional framework. In fulfilment of the obligation arising under Act No. 51 of 1981 approving the Convention on the Elimination of All Forms of Discrimination against Women, the Government promulgated Decree No. 1398 of 1990 establishing the Committee for Coordination and Monitoring of Policies to Combat Discrimination (annex 32). The predecessor to this Committee had been

appointed in 1980 (Decree No. 367 of 1980) with very limited functions. At the end of 1990, the Government set up the Office of the Presidential Adviser for Youth, Women and the Family, under the Office of the President of the Republic, with responsibility for defining policies and programmes and for intersectoral coordination and liaison with NGOs. In the pursuance of its activities, the Office defined the first national policy for women, which was approved by the National Economic and Social Policy Council (CONPES) in 1992. Together with the Ministry of Health, it coordinated the start-up of the "Health for Women and Women for Health" Programme; together with the Ministry of Agriculture, it defined and extended financial and technical support for the national policy for rural women, approved by CONPES in January 1984; with the Ministry of Education it launched the co-education programme; in association with the justice system, it coordinated and supported the family counselling programme; and it carried out demonstration programmes in the field of income generation and facilitation of domestic work. It also instituted gender-awareness programmes for public officials and for women's organizations.

72. The Government which took office in August 1994 set up the Advisory Commission for Equality and Participation of Women by Decree No. 2055 of 1994 (annex 33) as an advisory body serving the National Government. The bodies responsible for the definition, coordination and monitoring of policies of equality, as established by CONPES in its Document 2726 of 30 August 1994 (annex 34), comprise the Women and Gender Secretariat within the Office of the Presidential Adviser for Social Policy and the Gender Unit within the Ministry of the Environment, the woman Minister with that portfolio being responsible for the policy of equality.

73. The Act on the National Development and Investment Plan 1995-1998 (annex 34 referred to above) defines a new permanent institutional structure for policy implementation, in the form of the National Directorate for Equality, a body with administrative autonomy and its own resources, attached to the Office of the President of the Republic. The National Director, a woman, will serve on CONPES. In September 1995, this body will begin its work of consolidating and reinforcing the policies and programmes in effect.

74. Strategies and programmes. On the basis of the CONPES Document on the Policy of Participation and Equality for Women (annex 33 referred to above), the Government has defined the strategies and programmes that will enable progress to be made in promoting a cultural exchange to overcome the subordination of women and in bringing about development with equality for women and men:

(a) Institutionalization of policy: development and strengthening of the National Directorate for Equality;

(b) Culture of equality between men and women: public campaigns on equality; sensitization of public officials, NGOs and civil society in general to gender stereotypes and their consequences; training of public officials at the national and regional levels to introduce the gender dimension into all State programmes;

(c) Participation in the labour market: inclusion of women in the major national programmes on employment and income generation (National Small Business Plan, Solidarity Network emergency employment programmes); support for working women through improved coverage of the Community Family Welfare Centres catering for children under 7 years of age; amendments to the law to establish flexible working hours and other conditions for combining motherhood with paid employment (National Directorate for Equality); encouragement of membership of the Pension Solidarity Fund;

(d) Integrated health services for women: encouragement for women to join the contributory health scheme and for poor women to join the subsidized health scheme; health education and reproductive health programmes; maternal and child health (MCH) programme to provide medical and nutritional care for pregnant and nursing women and their children under one year of age; improvement of the coverage and quality of the health services; improvement of the coverage of hospital delivery care;

(e) Standard-setting activities: promotion of consultation between the public authorities and the women's social movement for the development of standards of equality and participation: participation in public administration and in forums for civil society; flexible working hours; violence against women; protection of family property;

(f) Legal protection: extension of the coverage of family counselling centres;

(g) Strengthening of women's organizations: support for national and local organizations to raise awareness and provide training and information on the services offered by the State and forums and mechanisms for participation;

(h) Research: studies and analyses of gender issues and the status of women.

Article 4

75. Protection of human rights in states of emergency. This part of the report analyses the relationship and correspondence between the protection of human rights in states of emergency by international human rights law and by Colombian domestic law.

76. Colombia has a dual obligation under international human rights law, since it is also bound by article 27 of the 1969 American Convention on Human Rights (Pact of San José, Costa Rica). The rules of the American Convention on Human Rights bear marked similarities to the requirements of article 4 of the Covenant and there are also some differences, which relate to the list of those human rights which constitute non-derogable core rights and the international body to be notified of decisions on states of emergency, i.e. the Office of the Secretary-General of the Organization of American States (OAS).

77. One of the reasons for the frequent application of states of emergency is that there is an internal armed conflict in Colombia which has very particular characteristics, but whose existence has a daily impact on the

population not directly involved in the hostilities, on civil society, on public opinion and on the national economy. As already stated in this report, the aim of the Government of Colombia is to find ways of bringing about a negotiated political settlement of this non-international armed conflict. In this regard, the Government wishes to draw the international community's attention to its willingness to achieve internal peace through dialogue and negotiation with the violent opponents of the constitutional regime. If a negotiated peace were to be secured, would it not then be possible to devote the resources now being spent on the war to building a more just society and meeting the needs of the least advantaged segments of the population? It should also not be forgotten that Colombia has also suffered and continues to suffer from a very difficult situation brought about by the corruption that drug trafficking has succeeded in introducing in many areas and at many levels of society and the State, and that this has furthermore made it necessary, particularly when the drug traffickers have used terrorist methods, to adopt emergency measures. However, it is inadmissible that anyone should state, a priori, that emergency measures have been taken for the purpose of violating human rights or covering up such violations or to limit the exercise of public freedoms. Any such statement would need to be backed up by proof drawn from the texts of the special provisions and with reference to cases in which human rights have been wilfully violated through use of the special powers of the Executive.

78. Constitutional provisions in force for states of emergency. It should be stated at the outset that the constitutional provisions in force in Colombia go much further and offer more safeguards for the protection of human rights in states of emergency than the minimum requirements of international human rights law, as contained in article 4 of the International Covenant on Civil and Political Rights and article 27 of the American Convention on Human Rights. This is clearly illustrated by the fact that article 214, paragraph 2, of the Constitution prohibits the suspension of human rights and fundamental freedoms in such circumstances and also stipulates that the rules of international humanitarian law must be respected. In addition, the Constitution calls for legal and political safeguards to be applied both for the declaration of states of emergency and for the use of special powers. It furthermore requires the special powers of the Executive to be regulated by a statutory act.

79. Declaration of states of emergency. Under articles 212, 213 and 215 of the Constitution, the President may declare a state of emergency, in a decree bearing the signatures of all the ministers, on the basis of the following constitutional criteria:

(a) Substantive grounds and reasons for declaring states of emergency:

  (i) Foreign war or declaration thereof;

  (ii) Internal disturbance or serious disruption of public order which poses an imminent threat to institutional stability, the security of the State or civil harmony and which cannot be dealt with by the ordinary powers of the police authorities;

(iii) For reasons other than those listed above which threaten or disrupt the economic, social or ecological order;

(b) Formal requirements:

(i) Decree of the President of the Republic bearing the signatures of all the ministers;

(ii) Under Colombian law, this decree must be proclaimed and brought to the knowledge of the public;

(c) Political and legal safeguards:

(i) At the political level, the Congress of the Republic must be convened or may meet as of right or on its own initiative immediately in cases of foreign war or within three days of the declaration of an internal disturbance. Under article 214, paragraph 5, of the Constitution, the President and the ministers bear responsibility when declaring states of emergency without a foreign war or internal disturbance having occurred, and they are also responsible, as are other officials, for any abuse they may have committed in the exercise of special powers;

(ii) At the legal level, the Constitution stipulates that the decree declaring a state of emergency and the special decrees issued by the Government in exercise of the special powers are subject to supervision by the Constitutional Court. The Government is required to transmit them to this high court on the day following their issuance; should it not do so, the Court will automatically and immediately take cognizance of them. In this regard, it should be noted that article 214, paragraph 1, states that measures decided on by the Government in exercise of the special powers may relate only to matters that have a direct and specific bearing on the situation defined by the declaration of the state of emergency. Another limitation on the Government is that a state of emergency declared for reasons of internal disturbance cannot last for more than 90 days; this may be extended for two periods of the same duration, the second of them requiring the prior and favourable opinion of the Senate of the Republic.

80. Protection of human rights in states of emergency. Regarding the protection of human rights in states of emergency, it has already been noted that Colombian law goes well beyond the "standard" minimum requirements of article 4 of the Covenant and article 27 of the American Convention on Human Rights. Article 214, paragraph 2, of the Constitution provides that human rights and fundamental freedoms cannot be suspended. It furthermore stipulates that the rules of international humanitarian law must be respected.

The Constitution therefore embodies the most modern theories on the complementarity of the two systems of international law to ensure that the human person is always protected, even in the gravest and most severe situations of emergency.

81. Act No. 137 of 1994, the Statutory Act on States of Emergency (referred to above as annex 12), regulates in very great detail the powers by which the Government may limit the exercise of particular rights in such circumstances, so that the limitations do not affect core rights and freedoms (art. 7 of Act No. 137). Articles 27 and 28 of the Act allow the Government to place restrictions on the press, radio and television in the case of a foreign war, as well as to limit freedom of movement and residence with a view to protecting civilian lives and facilitating military operations. The Act also permits the establishment of special zones of movement or residence.

82. In cases of internal disturbance, Act No. 137 specifies in article 38 the powers that may be exercised by the Government and the limitations it may impose on private individuals in respect of freedom of movement and residence; temporary requirements of technical and professional services and the establishment of restrictions on the press, radio and television; freedom of assembly and public demonstration; the interception or recording of communications - by order of the competent judicial authority - and the preventive detention of individuals - by order of the competent judicial authority - when there is evidence of their involvement in offences; regulation of the supply of basic necessities and essential services; the subordination or denial of the exercise of certain rights in respect of aliens; the imposition of fiscal or quasi-fiscal levies; and the search - by order of the competent judicial authority - of private residences.

83. As can be seen from this list of the Government's powers under the Statutory Act on States of Emergency (Act No. 137), the protection afforded for the basic core of human rights contemplated in article 4 of the Covenant and in article 27 of the American Convention on Human Rights goes well beyond satisfying the minimum requirements of international human rights law.

84. In particular, consideration should be given to two fundamental aspects:

(a) The last subparagraph of article 213 of the Constitution provides that civilians may in no case be investigated or tried by the military criminal justice system;

(b) Article 214, paragraph 2, requires that the statutory law on states of emergency should establish safeguards for the protection of human rights in conformity with international treaties. In this regard, article 4 of Act No. 137, the Statutory Act on States of Emergency, specifies the limitations on the Government as follows:

(i) The right to habeas corpus is non-derogable;

(ii) The judicial safeguards essential for the protection of fundamental rights cannot be suspended;

(iii) Article 57 of the Act secures the remedy of protection of fundamental rights so that the application for it and its handling cannot be made conditional or restricted in states of emergency.

85. As can be seen, the constitutional and legal rules in force in Colombia faithfully conform to the requirements laid down by the instruments of international human rights law and international humanitarian law and indeed go much further than the international rules as far as the protection of human rights in states of emergency is concerned.

86. Lastly, it should be pointed out that the Government of Colombia has always fulfilled its treaty obligation to inform the Secretary-General of the United Nations of the declaration of states of emergency and their termination, by decision either of the Government or of the Colombian courts; the Secretary-General has also been notified of the special measures adopted. Such information has likewise been provided to the Secretary-General of the Organization of American States.

Article 5

87. Constitutional and legal safeguards of human rights. As already mentioned, the Colombian Constitution provides in article 93 that international treaties and agreements to which the State is a High Contracting Party and which recognize human rights and prohibit their restriction during states of emergency take precedence over internal law; in addition, the rights and duties set forth in the Constitution must be interpreted in accordance with the international human rights treaties ratified by Colombia. Furthermore, the Constitution stipulates that the enunciation of the rights and guarantees contained in the Constitution and in the international agreements in force is not to be construed as negating other rights inherent in the human person which are not expressly referred to therein (art. 94).

88. On the basis of these provisions of the Constitution, the Constitutional Court, in its ruling on the constitutionality of Protocol II of 1977 Additional to the Geneva Conventions of 1949, applied and developed the originally French theory of a constitutional body of law ("*bloque de constitucionalidad*") and has raised it to the status of constitutional jurisprudence. In accordance with the Court's jurisprudence, international treaties in the field of international human rights law and international humanitarian law to which Colombia is a party form, together with the Constitution, a single body of law, i.e. they are integrated with the Constitution itself in what may be described as one "block". Accordingly, the State, the Government and public officials cannot fail to take cognizance of any of the rights and guarantees set forth in such treaties.

Article 6

89. Right to life, guarantees of the right to life and abolition of the death penalty. The death penalty does not exist in Colombia; it was abolished in 1910. The 1991 Constitution stipulates that there will be no death penalty and states in its preamble that the people of Colombia, represented by their

delegates, promulgate the Constitution for the purpose, inter alia, of ensuring life to the members of the nation. Article 11 stipulates:

> "Article 11. The right to life is inviolable. There shall be no death penalty."

90. The Constitution provides that the authorities are established in order to protect the lives of citizens and safeguards the right to life as a fundamental right through the remedy of protection, which was introduced to protect fundamental rights by guaranteeing a prompt, efficient and effective legal defence.

91. The internal armed conflict, the drug traffic, the excesses committed in connection with subversive and counter-subversive activities, private justice, common crime and impunity, as well as poverty, are some of the country's most compelling problems. All are linked to the phenomenon of violence. Many etiological, historical and sociological analyses have been made of the violence in Colombia, an endemic problem which is as old as the country's history as a republic and has been at a high level for the last four decades. At the same time, the Government and non-governmental organizations continue their many efforts to build a society in which conflicts are settled without the use of force.

92. Significant progress has recently been made by the Government in strengthening institutional and legislative mechanisms to build a country in which harmonious relations and social justice prevail. It is obvious, however, that such legal support is not enough to build the country to which all aspire; also needed is the unswerving determination of the Government to implement a set of policies aimed at restoring a sense of citizenship, reconciling the people with the Government, bringing about a negotiated peaceful settlement of the internal armed conflict and reducing significantly the high levels of poverty that afflict millions of Colombians.

93. Since he assumed office in August 1994, the President of the Republic, Ernesto Samper Pizano, has taken a clear stand on the responsibility of the State to protect and promote human rights. The Government recognizes that there have been abuses and arbitrary behaviour by some public officials and, in an effort to curb, prevent and penalize such behaviour, has put into effect a set of measures, some of which were mentioned earlier, while others will be discussed below. One important way of coming to grips with the problem of human rights violations is to try to determine its exact dimensions. The statistics produced by non-governmental organizations in Colombia tend to misrepresent the proportions of political violence and human rights violations by public officials, through improper handling of the indicators, as seen earlier. What is certain is that the figures show that some of the most serious types of human rights violations have begun to decrease and we cannot but point to this fact as an encouraging sign, in the midst of a very complex picture.

94. Recognition of the difficult human rights situation in Colombia is a basic tenet of President Samper's humanitarian policy. This has been the foundation of the Government's policy, which is aimed at curbing the phenomena that are conducive to violence and its attendant human rights violations;

punishing those responsible for the violations; and using all possible means to guarantee respect for and promotion of the human rights, especially the right to life, of all the inhabitants of the national territory.

95. With regard to its relations with non-governmental human rights organizations, the Government promotes an open-door policy for individuals and organizations specializing in the promotion and protection of human rights, which it considers to be its partners in the task of guaranteeing the fundamental rights of the inhabitants of the national territory. It seeks to maintain constructive relations with human rights bodies in trying to eliminate violations and, for its part, will spare no effort to protect the lives and integrity of their members.

96. In accordance with these principles, the Government sponsored two important consultations with non-governmental organizations during the period under review. The first took the form of the National Human Rights Commission, which was established by Decree No. 1533 of 1994 (referred to above as annex 10) and recessed in late 1995 as a result of a decision by the non-governmental organizations, and the second, the Commission for the Clarification of the "Trujillo Case", Inter-American Commission on Human Rights, case No. 11007.

97. It should be noted that the 1994-1998 National Development Plan contains a specific section on human rights and that this is the first time in the country's history that human rights have been explicitly referred to in the Development Plan and included among its priority tasks. Despite these efforts by the Government, the fact that so many violent attacks take place in Colombia cannot be ignored; they have made Colombia the world leader in statistics on violent deaths, with an annual rate of nearly 80 violent deaths per 100,000 inhabitants, by far the highest in the world. The extent and nature of the State's responsibility for this horrible statistic may be debatable, but a theoretical discussion of this problem does not mean that recognition of the situation can be avoided.

98. In order to deal with this situation, the Government is promoting a decisive human rights policy, whose main programmes and legislative and administrative measures are described below:

MEASURES AGAINST IMPUNITY

1. Strengthening of the system of justice

Government policy for strengthening the system of justice focuses on the following areas:

(a) Technical and human resources support to make the system more efficient and streamline judicial departments;

(b) Promotion of access to judicial and legal services and the administration of justice: citizens' access to such services will be made easier and out-of-court conciliation mechanisms will be widely promoted. A citizens' counselling service is also planned;

(c) Crime prevention and social rehabilitation as the central feature of prison policy;

(d) Organization of medical, legal and psychological assistance programmes for victims, with special emphasis on minors;

(e) Construction and renovation of prisons.

2. Streamlining of judicial departments

On 15 November 1994, the President of the Republic issued Presidential Directive No. 04 ordering officials of the executive branch of Government to help create conditions favourable to conciliation procedures at the pre-trial or trial stage in proceedings against the nation, with a view to relieving pressure on judicial departments and enabling them to operate promptly and economically.

3. Establishment of the National Human Rights Procurators Unit

The Public Prosecutor's Department has issued a decision establishing the National Human Rights Procurators Unit, whose purpose is to expedite investigations into serious violations of human rights and international humanitarian law;

The Unit is responsible for coordinating and monitoring the investigatory functions carried out by the Judicial Police;

This measure reflects the high priority given by the Public Prosecutor to the investigation of human rights violations and is an important step forward by the country in combating impunity.

4. Other measures against impunity

Other measures adopted by the Government of Colombia are the following:

Support for the National Human Rights Procurators Unit;

Special Commission for the investigation of the violence in Trujillo;

Follow-up Committee on the implementation of the recommendations of the Trujillo Commission;

Commission to monitor the situation of human rights and international humanitarian law in the Department of Meta;

Support Committee for the administration of justice in connection with the events at Villatina, Caloto and Los Uvos;

Follow-up Committee on the recommendations of the support committee for the administration of justice in Connection with the events at Villatina, Caloto and Los Uvos.

5. Reform of the military criminal justice system

In March 1994, the Ministry of Defence established a commission for the reform of the Military Criminal Code, whose work focused on the following areas:

Definition of active service;

Adoption of the adversarial system;

Participation of civilians (victims and relatives) in military trials;

Inclusion of, and harsh punishment for, new offences such as torture, enforced disappearance of persons and genocide;

Establishment of a military judicial apparatus that is independent of the military command structure;

Establishment of a legal aid system (State-financed legal assistance for persons accused of an offence);

Mandatory participation by the Government Procurator's Office under the close supervision of the Attorney General's Office.

On 15 August 1995, the Commission submitted its proposal to the Government for a new Military Criminal Code, which is being studied by the Ministry of Defence for submission to Congress.

6. Legislative reforms

The following are some recent legislative bills aimed at the protection and promotion of human rights:

(a) Bill on the adoption of the Inter-American Convention on Forced Disappearance of Persons

The Organization of American States Convention was submitted to the Congress of the Republic for approval, without reservations, in 1994. Congress did not complete the process. The Government intends to resubmit the bill, which it regards as being of fundamental importance, to Congress for consideration.

(b) Act No. 62 of 1993, on the reform of the National Police

Act No. 62 of 1993 introduced a reform of the National Police. The following are among its most significant elements:

Establishment of the Office of the National Police Commissioner. This office, which is headed by a civilian with legal training who is equal in rank to the Chief of Police, is the highest-ranking internal disciplinary control body;

Establishment of the National System of Participation in Police Affairs, which is designed to bring the community closer to the uniformed police force through national, departmental and local committees;

Establishment of the executive branch, which works for the improvement of police officers' salaries. This section of the reform was declared unconstitutional for technical reasons. New legislation is currently being prepared.

(c) Bill on compensation

The Ministries of Foreign Affairs and Justice, the Legal Department of the Office of the President of the Republic and the Office of the Presidential Adviser for Human Rights submitted a bill to the Congress of the Republic "providing for compliance with the recommendations of intergovernmental human rights organizations on compensation for loss or injury". The bill is currently under consideration by the Senate.

(d) Implementing Decree No. 173 of 1993

This decree contains regulations governing the "Pre-trial Administrative Conciliation" mechanism provided for in Act No. 23 of 1991. Decree No. 173 of 1991 provides for compensation for mental and physical injury caused by public officials, through an expeditious procedure involving participation by the Government Procurator's Office and the approval of an agreement between the parties by the administrative court, which decides the matter within a period of not more than two months.

(e) Justices of the peace

The bill relating to the justices of the peace defines the scope of the justices' competence and the procedures to be followed by them in mediating minor conflicts within the community.

(f) Access to justice without a lawyer

This bill before Parliament is intended to enable individuals to carry out a series of steps and procedures relating primarily to the administration of justice, without need of a lawyer.

(g) Enforcement proceedings

This bill has been submitted by the Government to the Congress of the Republic. Its purpose is to institute rules governing the constitutional provision (art. 87) which enables individuals to appear before the judicial authority to demand the application of a law or the fulfilment of an administrative act. It is currently being processed by the legislature.

(h) Material responsibility of the State

This bill provides for the possibility of State claims for restitution from a public official who is guilty of an act or omission that had a bearing on the injury caused. It is due to be submitted to the Congress of the Republic shortly.

(i) Single disciplinary code

The following are among the most significant aspects of this recently adopted law:

It increases the statute of limitations for disciplinary action;

It characterizes genocide and enforced disappearance of persons as serious offences;

It lays down a period of 10 days within which the official's superior must order the penalty requested by the Government Procurator to be carried out;

It provides for the possibility of a six-month suspension for an official who is being investigated, in order to avoid any undue interference;

It protects members of the police and armed forces.

(j) Statute of the Administration of Justice

This bill lays down regulations governing the constitutional provisions on the organization and jurisdiction of the judiciary. Among the proposed regulations are the remedy of direct compensation for unsatisfactory performance of judicial services and the civil liability insurance policy required of all members of the judiciary.

7. Strengthening of internal prevention and control measures

The Ministry of Defence ordered the establishment of the Office for Human Rights and Political Affairs of the Ministry of Defence and that of human rights and international humanitarian law offices in all military garrisons and police stations. To date, 126 human rights offices have been established within the army, 5 in the navy and 3 in the air force; offices have been established in the Police Department, the Department of Military Intelligence, the Narcotics Division, the 33 local police departments and the 15 police training schools.

With regard to the police, Act No. 62 of 1993 assigned the National Police Commissioner the function of instituting disciplinary and criminal investigations against members of the police force if necessary and sponsoring prevention policies.

8. National Communications Network for the Protection of Human Rights in Colombia

In order to streamline the handling and processing of cases of human rights violations, the Government, in cooperation with the Government of the Netherlands, has put into operation the National Communications Network for the Protection of Human Rights, which will use information technology to supply prompt information to the bodies responsible for investigating and monitoring human rights violations.

The project will design, develop and implement a comprehensive information system which will collect data on human rights violations throughout the national territory and send information to bodies with competence and capacity to investigate and/or punish human rights violations.

9. Citizens' Security Plan

This is an initiative aimed at crime prevention and respect for human rights through coordinated action by the national, departmental and local authorities and the public.

The Citizens' Security Plan is intended by the Government to modernize the police and make it more professional by expanding the reform introduced in Act No. 62 of 1993, emphasizing its civilian nature and its preventive action and promoting a closer and more positive relationship with the community.

10. Programmes for resolving specific regional and social situations of violence and human rights violations

The Government plans to pay special attention to the regions and communities hardest hit by violence by promoting inter-agency and policy coordination schemes aimed at promoting harmonious relations.

It should be noted that one of the objectives of the Act on the Reorganization of the Ministry of the Interior is to provide the Ministry with the tools for promoting harmonious relations at the local, regional and national levels and improving the institutional response to the needs of citizens in order to defuse conflicts that adversely affect human rights as a whole.

Efforts will also focus on strengthening human rights at the local level, through promotion and education activities for building up local promotion and protection bodies such as municipal councillors, human rights committees and groups and other kinds of associations.

11. Combating private justice

The inappropriately named "paramilitary" or "self-defence" groups have traditionally been connected with the peasants' reaction to guerrilla attacks. In recent years, however, the drug traffic has played an important role in the problem by establishing armed groups to serve its interest and to take over large stretches of land.

According to a study by Alejandro Reyes Posada (a researcher with a National University's Institute of Political Studies) entitled "Geography of violence in Colombia", in 67 per cent of the municipalities where military groups are present, there has also been an increase in the rate of land acquisition by drug traffickers.

The Government is concerned about persistent reports of participation by State officials in the activities of such organizations, which is nearly always the choice of an individual or a small group of officials rather than a "counterinsurgency strategy".

The Government intends to deal with this problem on several fronts, as follows:

(a) Small Arms Amnesty Act, which is to be submitted by the Executive to Congress for consideration and will contain specific rules;

(b) Revival of existing legal mechanisms prohibiting hired killers and private justice (Decrees Nos. 813, 814 and 815 of 1989);

(c) Study by the Ministry of the Interior on the offer by some private justice groups to enter into a dialogue with the Ministry with a view to their disbandment and in preparation, according to the Minister, for turning themselves over to the system of justice;

(d) Establishment by the Public Prosecutor's Office of specialized units for investigating offences committed by private justice groups.

12. Human rights education for the police and armed forces

Human rights education for the police force is aimed not only at providing instruction on the body of universal legislation governing harmonious relations in society, but at creating the conditions necessary for the observance of that legislation out of a personal ethical and moral conviction that will prevent abuses and cover-ups in the mistaken belief that these are necessary for the protection of military honour.

It is a well-known fact that confrontation has serious effects on the psychological structure of the individuals directly involved, creating confusion and causing some officials to see a contradiction between the strict observance of ethical standards and the strategic and tactical objectives of the military. The escalating brutality of the fighting in Colombia creates a desire for vengeance and reprisals as a result of the pain and hatred that barbarous acts would make any human being feel. This is the breeding ground for political violence. Under these circumstances, some officials have committed human rights violations in the belief that they were acting on behalf of the nation.

In view of this problem, the Government, through the Ministry of Defence and the Office of the Presidential Adviser for Human Rights, is assessing human rights education programmes for the police and armed forces in an effort to design an ambitious educational project aimed at getting police officers to adopt the cause of human rights as their own so that abuses will be curbed and punished and, above all, so that further abuses will not be committed.

In pursuance of these goals, the Ministry of Defence has set itself the long-term strategic objective of promoting and strengthening a human rights culture and ethic within the police and armed forces. Human rights should not be perceived as an antimilitary or anti-institutional issue. In addition to broadening the cultural outlook of the members of these forces, learning about and observing human rights will have a positive effect on the discipline and professionalism inherent in it.

The following policies have been implemented in order to achieve this objective:

(a) "Special campaign for human rights observance", aimed at army personnel and police officers at the national level; the methodology of this educational campaign consists of holding regional seminars to consider cases of violations of human rights and international humanitarian law as a basis for group reflection and discussion. The campaign is sponsored by the Ministry of Defence and the Office of the Presidential Adviser for Human Rights and is run by a team of professionals;

(b) Mass production of teaching materials for all military garrisons and police stations, such as posters and pamphlets. As part of this information campaign, the basic rules of human rights and international humanitarian law were printed on a card, which all the soldiers carry in their pockets;

(c) Training seminars for human rights instructors in the training schools for commissioned and non-commissioned officers of the national army, run by the Office of the Presidential Adviser for Human Rights in coordination with the Military Weapons and Services School;

(d) Human rights training workshops as part of the advancement courses for uniformed and non-uniformed police officers and special courses for members of the Judicial Police;

(e) Participation of the Ministry of Defence in all situations that may be used to publicize and formulate human rights promotion and protection policies.

13. Other approaches to the protection of human rights

(a) Formulation of a special programme to facilitate the task of the International Committee of the Red Cross of gathering up-to-the-minute information on detentions and arrests throughout the national territory;

(b) Formulation of a special programme for the protection of witnesses in trials involving human rights violations and persons at risk or those whose personal integrity is under threat for ideological or political reasons;

(c) Systematic efforts to find persons missing for political reasons and formulation of a programme to centralize information on missing persons and unidentified corpses.

STRENGTHENING AND EXPANSION OF AREAS OF COOPERATION AT THE NATIONAL LEVEL WITH NON-GOVERNMENTAL ORGANIZATIONS WORKING IN THE FIELD OF HUMAN RIGHTS

On 23 August 1994, Presidential Decree No. 1533 of 1994 established the Human Rights Commission as a body for the coordination of policies and measures for the protection of human rights.

The Commission brought together the most representative governmental and non-governmental sectors with responsibilities and interests in the field. In a constructive and enterprising spirit, these sectors set themselves the task of holding discussions to reach consensus on the most important human rights topics.

Background

As part of Peace Agreement concluded on 9 April 1994 between the Government and the Corriente de Renovación Socialista (Socialist Renovation Movement (CRS)), a guerrilla group that has demobilized and re-entered democratic civilian life, it was decided that the Office of the Presidential Adviser for Human Rights would hold a forum to analyse the proposals submitted by the CRS during the negotiations;

Pursuant to that mandate, the Office of the Presidential Adviser for Human Rights and the CRS agreed to establish a Preparatory Committee for the Forum so that, from the outset, all sectors concerned with human rights would be involved in discussing and identifying solutions to the problem;

The Forum, called "Human Rights: Goals and Proposals", was held on 21 and 22 July 1996; 450 people took part; work was divided among four committees dealing with four central topics: peace policies, international humanitarian law, protection of human rights and impunity;

The constructive and enterprising nature of the event produced a broad consensus on initiatives relating to the areas discussed.

Establishment and functions of the National Human Rights Commission

Presidential Decree No. 1533 of 18 July 1994 established the Human Rights Commission, the main purpose of which was to continue developing the topics and proposals of the above-mentioned Forum and spell out their details to the extent necessary for agreement and approval;

The Commission was established for a period of six months, extendable once, and was in fact extended.

Composition

Article 3 of Decree No. 1533 stipulated that the Human Rights Commission would be made up of: the Director of the Administrative Department of the Office of the President of the Republic, the Minister of the Interior, the Minister of Defence, the Minister for Foreign Affairs, the Presidential Adviser for Human Rights, the Presidential Adviser for Peace, the Presidential Adviser for Defence and National Security, the Public Prosecutor, the Attorney General, the Ombudsman, the Director of the Colombian Red Cross, a representative of the Colombian Episcopal Conference, the Representative of the International Committee of the Red Cross, and a representative of each of the following human rights non-governmental organizations: Citizens' Initiative for Peace; Andean Commission of Jurists, Colombian Section; Standing Committee for the Defence of Human Rights, International Working Group for Human Rights; as international observers: Inter-American Commission on Human Rights, Chargé d'Affaires of the Kingdom of the Netherlands.

In accordance with its functions, the Commission has agreed to accept the following other bodies as members: Ministry of Justice, Sole Workers' Federation (CUT), People's Research and Education Centre (CINEP), Association of Retired Army Officers, Corporación Utopias, National Department of Planning, Committee on Solidarity with Political Prisoners and the Human Rights Committee of the House of Representatives.

Functions

The Commission has an Executive Committee made up of governmental and non-governmental bodies, the CRS and the Government Procurator's Office.

The basic rule for decision-making is that decisions are adopted by consensus.

To process and analyse the problems with which it is concerned, the Commission initially established four working groups dealing with the same topics dealt with by the above-mentioned Forum:

Peace policies;

International humanitarian law;

Protection of human rights; and

Impunity.

For the second phase, after an assessment of the work accomplished, it was decided to use a new methodology consisting of the establishment of technical groups to analyse disagreements and do further work on insufficiently treated topics.

All member bodies of the Commission participate in the work of each Working Group.

The plenary met once a month to be informed of and discuss the Working Groups' progress.

Assessment

This was the most extensive attempt ever made in Colombia to find collective and coordinated solutions to the human rights problem.

The discussions were not devoid of healthy debate, but there was a constructive and positive feeling on the whole.

Although consensus could not be expected on all the matters dealt with, the Government had hoped that this exercise in coordinating the complex human rights problem would lead to some basic agreements on practical measures as a result of initiatives by civilian and military, governmental and non-governmental sectors.

The Commission is currently in recess owing to a decision by the non-governmental organizations to withdraw in order to express their disagreement with the emergency measures taken by the Government at the end of 1995. The Government hopes to complete the process with the coordinated preparation of a final assessment of activities and results.

PEACE POLICY

In order to fulfil the highest obligation of the Colombian State to avoid wars and humanize any armed conflicts that take place within its territory, the Government has implemented a peace policy that aims to find new ways of negotiating with armed insurgent groups and has made significant progress in humanizing such conflicts.

As already stated, the Government of Colombia has the political will to seek a negotiated political solution to the internal armed conflict affecting the country and assures the United Nations Human Rights Committee that it is willing to establish contacts and hold talks with the armed insurgent groups. The international community can keep itself informed and seek ways of contributing to this process through the Committee. Despite the foregoing, however, the Government of Colombia cannot fail to fulfil its constitutional obligation to maintain and restore law and order in the country and defend national unity and the territorial integrity of the State by all legitimate means; to that end, it will use every means made available to it by the Colombian Constitution and the laws to carry out its mandate under the Constitution through the legitimate use of force.

In his statement on taking office, President Ernesto Samper indicated that he was willing to negotiate with the guerrilla movements, appointed a High Commissioner for Peace and called on all citizens to cooperate in building harmonious relations.

In pursuance of these objectives, the Colombian Congress adopted Act No. 171 of 1994, by which Colombia accedes to Protocol II Additional to the Geneva Conventions of 1949, approved by the President of the Republic on 16 December 1994. Additional Protocol II of 1977 entered into force for Colombia on 15 February 1996.

The Government's humanitarian policy is more ambitious still. The President has proposed that the guerrilla groups should observe some minimal rules of conduct, as prescribed by international humanitarian law, and is prepared to ask the armed forces and the police to observe the same rules and to hold discussions with the armed insurgent groups on verification mechanisms which might be supervised by the Government Procurator's Office or the International Committee of the Red Cross.

The President of the Republic accepted the proposal by the High Commissioner for Peace that a preparatory phase for possible negotiations should start on the basis of the following guidelines:

The process should be discreet and confidential;

The Government would prefer simultaneous negotiations with all the groups, but did not rule out other possibilities;

The Government would prepare a general act which would call on people to turn in their weapons and would include specific rules for disbanding self-defence and "paramilitary" groups; it would take steps to ensure that the State maintained control over all weapons;

Peace negotiations in the midst of war: the Government was prepared to conduct negotiations without the prerequisite of a cease-fire;

Humanitarian policy: the Government confirmed, repeated and fulfilled its obligation to comply with the rules of international humanitarian law, defend and protect human rights and establish policies aimed at providing comprehensive care for persons displaced by the violence;

Participation of civil society: during this stage, in the framework of consultations on the Development Plan, the Government would encourage the setting-up of round tables for peace, to which Colombians could submit their opinions on the process for consideration.

Despite the fact that the presidential initiative did not strike a responsive chord with the guerrilla groups, the Government is prepared to continue its peace efforts in the full knowledge that peace is an essential prerequisite for effectively guaranteeing all citizens the most fundamental human right: the right to life.

STRENGTHENING OF INTERNATIONAL COOPERATION MECHANISMS IN RESPECT OF HUMAN RIGHTS AND INTERNATIONAL HUMANITARIAN LAW

The Government has been working to strengthen international cooperation mechanisms, which have a positive effect on the human rights situation. International cooperation should be based on objectivity, reciprocity, balance and respect for national sovereignty.

Following this approach, President Samper's Government has taken account of the recommendations made by various intergovernmental organizations and will continue to take them into account in designing its human rights policy.

It has a careful review of the country's situation with regard to international human rights law and international humanitarian law for the purpose of determining the extent to which they are being implemented and designing appropriate measures.

The Government formally invited Amnesty International to open a permanent office in Colombia. This proposal was made by the Minister for Foreign Affairs to Mr. Pierre Sané, Secretary-General of Amnesty International, during his visit to the country in November 1994. The purpose of the invitation was to enable Amnesty International to adopt a direct and sensible approach to human rights in Colombia so that its evaluations might help to design solutions that would benefit the country.

Mr. Francis Deng, Representative of the Secretary-General on internally displaced persons, visited the country in July 1994. In October 1994, at the invitation of the Government, the country was visited by Mr. Bacre Waly Ndiaye, Special Rapporteur on extrajudicial, summary or arbitrary executions and Mr. Nigel S. Rodley, Special Rapporteur on the question of torture appointed by the the United Nations Commission on Human Rights. During their stay in Colombia, the Special Representative and the Special Rapporteurs had the opportunity to speak with governmental authorities, various non-governmental human rights organizations and other sectors of civil society.

The United Nations High Commissioner for Human Rights, Mr. José Ayala Lasso, also accepted an official invitation by the Government to visit the country and meet with State authorities and non-governmental human rights organizations. This visit was held from 11 to 16 December 1994. The President of the Republic requested the High Commissioner to open an office in Colombia. To this end, Mr. Ayala Lasso appointed Mr. Philippe Texier and Mr. Carlos Villán Durán to determine the matters to be dealt with by the Colombia office as a matter of priority. Mr. Texier and Mr. Villán Durán visited the country in August 1995. On the basis of a statement made by the Chairman of the United Nations Commission on Human Rights at its fifty-second session, the High Commissioner for Human Rights was requested to open the Colombia office. Preparations for and negotiations on the necessary basic agreements are now under way.

The Government considers these visits to be especially important as steps forward in furthering cooperation with intergovernmental bodies and non-governmental human rights organizations.

To give effect to the recommendations of several members of the intergovernmental organization system for the protection of human rights, the President of the Republic issued Decree No. 1290 (annex 4) on 31 July 1995 "establishing the Commission for the analysis of and advisory assistance in implementing the recommendations of international human rights bodies". The Commission, which is composed of the Ministers for Foreign Affairs, the Interior, Justice and Defence, the High Commissioner for Peace, the directors of the National Planning Department and the Administrative Security Department and the Presidential Advisers for Defence and Security for Human Rights, is responsible, inter alia, for the implementation of the recommendations of the international human rights bodies and the experts appointed by them.

On 15 February 1996, an agreement was signed with the International Committee of the Red Cross, in accordance with the Headquarters Agreement adopted in 1980, governing ICRC's humanitarian activities in Colombia. ICRC has been working in the country since the late 1970s and has made a substantial contribution to protection and humanitarian assistance for the victims of the armed conflict.

President Samper's Government has also submitted several human rights cooperation projects for consideration by Governments and international organizations.

Article 7

99. Prohibition of torture and cruel, inhuman or degrading treatment or punishment; prohibition of medical or scientific experimentation without consent. Torture and cruel, inhuman or degrading treatment or punishment are prohibited under article 12 of the Constitution, which stipulates:

> "Article 12. No one shall be subjected to enforced disappearance, to torture or to cruel, inhuman or degrading treatment or punishment."

100. Colombia adopted the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment through Act No. 70 of 1986.

101. Torture is characterized as an offence in the section of the Criminal Code on offences against personal autonomy (art. 279) and carries a penalty of 5 to 10 years' imprisonment, unless the act constitutes an offence punishable by a heavier penalty.

> "Article 279: Anyone who subjects another person to physical or mental torture shall be liable to between five (5) and ten (10) years' imprisonment, unless the act constitutes an offence punishable by a heavier penalty."

The system of criminal justice characterizes torture as a circumstance that increases the penalty for the offence of abduction when it is committed against the victim of the principal offence.

102. In addition to these constitutional and legal provisions, there are safeguards designed to prevent the practice of torture in situations where a person is deprived of his liberty. Procedures relating to arrest and

detention contain measures designed to guarantee the integrity of the person concerned during such time as he is deprived of his liberty. The new Code of Criminal Procedure (Decree No. 2700 of 30 November 1991) provides that terms of imprisonment are to be served in places and in the manner provided for by law (art. 45). Failure to comply with the legal requirements constitutes the offence of unlawful deprivation of liberty, which is taken as arbitrary conduct by an official. It is liable to a term of one to five years' imprisonment.

103. When a person is arrested, it must be placed on record that the arresting official stated the grounds for the arrest; and informed the person concerned of and facilitated his right to consult immediately with defence counsel and with the person to be apprised of the arrest. These measures are designed to prevent detention incommunicado by guaranteeing constant contact between the detainee and his lawyers and relatives as a means of helping to prevent torture and cruel and inhuman treatment.

104. In order to ensure that the arrest is carried out in accordance with these legal rules, provision is made for the remedy of habeas corpus (art. 430 of the Code of Criminal Procedure), which protects freedom when the rules have not been complied with or deprivation of liberty is extended unlawfully. When an unlawful arrest has taken place, the person concerned is entitled to the following guarantees:

(a) He may apply to any judge or magistrate in the place where the unlawful arrest occurred or the place closest to it so that the judge or magistrate may decide, within the next 36 hours at the latest, whether his release should be ordered; the application may be submitted to any judicial officer, but the proceedings are conducted exclusively by the criminal judge;

(b) The remedy may be applied for by third parties on the person's behalf, with no need for a power of attorney;

(c) The proceedings may not be suspended or postponed on account of holidays or court recesses.

105. Since promptness is of the essence in this regard, the decision-making process and action on the decision override any contingencies or circumstances which may delay the proceedings. Article 434 of the Code therefore prohibits the application from being referred to another judge.

106. Another important safeguard is that there are provisions which invalidate testimony, confessions or any other evidence obtained by torture. In this connection, the Code of Criminal Procedure states that the following constitute evidence: inspection, expert investigations, documents, testimony and confession.

107. Act No. 65 of 1993 introduced the new Penitentiary and Prison Code, which brings the penitentiary rules into line with the principles of the 1991 Constitution. It contains the basic principles to be applied in the enforcement of criminal penalties in a humane and modern way in keeping with the precepts of the Constitution and the international human rights instruments. This new legislation has made it possible to design a

penitentiary policy based on the guiding principles of equality and respect for human dignity. These legal precepts ensure the observance of the International Covenant on Civil and Political Rights in legislation relating to the penitentiary system. Articles 5 and 6 of the Act stipulate that there shall be respect for human dignity in all detention centres and respect for constitutional guarantees and universally recognized rights, and prohibits all forms of psychological, physical or mental violence. The Act also states that penalties have a protective and preventive function and that their ultimate goal is resocialization, treatment, protection and rehabilitation of the individual who has committed an offence.

108. An inmate is held incommunicado only in the following cases:

(a) For health reasons;

(b) When necessary for maintaining prison security;

(c) As punishment. In such cases, it may be ordered only for 60 days, with entitlement to two hours a day outside, and under the supervision of the prison doctor;

(d) At the inmate's request, with prior authorization from the warden.

Other legislative measures

109. Article 60 of the Attorney General's Office Organization Statute (Act No. 201 of 1995) assigned the Office of the Procurator for the Defence of Human Rights the following main functions:

(a) To hear in first instance disciplinary proceedings in connection with human rights violations in cases of genocide, massacres, multiple killings, enforced disappearances and torture, as well as serious violations of humanitarian law, committed in the exercise of their functions by members of the Ministry of National Defence, the Armed Forces, the National Police and other public officials;

(b) Ensure the protection of human rights in prisons, judicial and police premises and psychiatric institutions, so that inmates will be treated with respect for their dignity and will not be subjected to torture or other cruel, degrading or inhuman treatment and will receive proper legal and medical assistance and hospital care. When it determines that a violation has taken place, it shall institute the appropriate proceedings.

In view of the nature of torture, the law assigned specific jurisdiction to the Office of the Procurator for Human Rights without regard for the rank or organization to which the accused person belongs. Torture was also distinguished from other offences to be investigated and punished as violations of human rights, such as personal injury cases, which are heard by other services in the Government Procurator's Office.

110. Because the Public Prosecutor was concerned about the human rights of accused persons, and in particular of citizens, in relation to the criminal investigation powers of some officials, he established the disciplinary regime

provided for in chapter I, section VII, of Decree No. 2699 of 1991, the Organization Statute of the Public Prosecutor's Office, according to which torture is a disciplinary offence against human rights (art. 21 of Decision No. 017 of July 1992).

Judicial remedies

111. In 1993, the Constitutional Court declared that some of the decrees issued in connection with the state of internal disturbance, including the one which restricted the exercise of the right of habeas corpus (the essential mechanism for preventing torture), were unenforceable in proceedings before the regional courts, as was the decree ordering that mobile criminal investigation police units should be set up comprising members of the armed forces.

112. An important precedent in this regard is the judgement of 16 December 1987 by which the Council of State confirmed the ruling declaring the Ministry of Defence administratively responsible for the mental and physical injuries suffered by Dr. Olga López de Roldán, who had been tortured on military premises in 1979. In a judgement of 5 February 1988, the same high court declared the Ministry of Defence responsible for the death of Marcos Zambrano, who had been tortured by military personnel in 1980.

113. As regards political measures, in December 1991 the Government set forth its comprehensive policy to combat all types of violence affecting the country, including torture. This policy was embodied in the document entitled "National Strategy against Violence", which gives details of inter-agency coordination activities and the areas of jurisdiction of the various government bodies in respect of the strengthening of justice and policies to deal with different types of violence and with the protection and promotion of human rights.

114. Concerning whether an order by a superior or public authority may be invoked as justification for torture, article 91 of the 1991 Constitution stipulates:

> "Article 91: In the event of a manifest violation of a rule of the Constitution to the detriment of any person whatsoever, superior orders do not relieve the agent exercising them of responsibility.
>
> Serving military personnel shall be exempt from this provision. Where they are concerned, responsibility shall be borne solely by the superior who issues the order."

Article 91 of the Constitution relates to the constitutional responsibility that lies with any authority who specifically violates a fundamental right to the detriment of an individual, thereby incurring each and every type of legal responsibility (criminal, disciplinary, civil or administrative), and who may not cite in justification an order, albeit a lawful one, received from a higher authority. Military order and discipline dictate an exception to this constitutional rule for members of the armed forces on active service, in whose case responsibility lies with the superior who gave the order. Nevertheless, this exception may not be interpreted as justifying torture, since the right to physical integrity, as has been observed, is inalienable and may not be suspended under any circumstances.

115. The classification of torture is dealt with in article 256 of the Military Criminal Code, which covers both physical and mental torture. The article states:

> "Anyone who subjects another person to physical or mental torture shall be liable to between one (1) and three (3) years' imprisonment, unless the act constitutes an offence punishable by a heavier penalty."

116. With regard to the right of individuals to file a complaint and to have their case promptly and impartially examined by the competent authorities and to have measures taken to ensure that the person who has filed the complaint and any witnesses are protected against ill-treatment or intimidation arising from the filing of the complaint or testimony, it should be noted that, in the last two reports submitted by the Office of the Attorney General of the Nation on human rights, it was stated that, in view of the serious nature of the offence, complaints of torture undergo a very stringent investigation because the diversity of the alleged acts, which range from simple ill-treatment to torture proper, makes it extremely difficult for the investigator to determine whether he is dealing with a case of bodily harm or a case of genuine torture. In either case, however, the preliminary proceedings to establish the facts and the identity of the perpetrators are the responsibility of the Special Investigations Bureau, a subdivision of the Office of the Attorney General with criminal investigation powers and personnel trained for this type of investigation.

117. It should be noted that the biggest increase in human rights complaints by ordinary citizens to the Office of the Attorney General has concerned torture, reported acts of which increased by at least 23 per cent in 1993-1994 compared with 1992, according to the analysis of the data recorded in the most recent report on human rights submitted by the monitoring body.

118. It is worth noting in this regard that, according to the report from the Human Rights Data Bank of the Centro de Investigaciones de Educación Popular (Popular Education Research Centre) (CINEP), 21 cases of torture were reported in Colombia between January and October 1994.

119. During the period covered by this report, 58 complaints of torture were submitted to international bodies by residents of Colombia. The competent national authorities conducted the appropriate investigations to ascertain the truth of the acts reported and determine who was responsible for them. The Ministry of Foreign Affairs has periodically informed the Special Rapporteur on torture of the status of the investigations.

120. With regard to the measures which the States parties undertook to adopt for the protection of anyone submitting a report or a complaint of torture and their witnesses, Decree No. 2699 of 1991 assigns this responsibility to the Office of the Attorney General of the Nation, through its Office for the Protection of Victims and Witnesses.

121. Act No. 104 of 30 December 1993 (see annex No. 24) set up the "Programme for the protection of witnesses, victims, persons involved in the cases and officials of the Office of the Attorney General of the Nation", whereby "full protection and social assistance will be granted to such persons and their relatives to the fourth degree of blood relationship, the first degree of relationship by marriage and the first degree of civil relationship and to

their spouses or permanent partners if they are at risk of aggression or their lives are in danger because or at the time of their participation in criminal proceedings" (art. 63). The persons covered by this programme may be given physical protection, social assistance, a change of identity and of domicile, and other temporary or permanent measures designed to guarantee adequately the preservation of their physical and moral integrity and that of their families. When circumstances so require, the protection may include a transfer abroad, including travel and subsistence expenses for the period and under the conditions indicated by the Office of the Attorney General of the Nation (art. 65 of Act No. 104 of 1993). Lastly, the Protection Programme may also cover witnesses who take part in investigations conducted by the Office of the Attorney General of the Nation concerning acts serious enough to be regarded as atrocities.

122. The legal system embodies clearly defined procedures for obtaining fair and adequate compensation not only for acts of torture, but also for any other type of abuse committed by public officials.

123. The commonest of these procedures, and the quickest and most effective way of obtaining satisfaction, is to bring a direct reparation action before the administrative courts, which have jurisdiction to hear cases in each of the departments into which the country is divided and are assisted by the Council of State, which is the highest authority in this area of the law. Awards under the direct reparation action procedure provide for two types of compensation for victims or their relatives:

(a) Compensation for moral damage, calculated in grams of gold;

(b) Compensation for material damage caused, including lucrum cessans and damnum emergens.

124. Article 90 of the 1991 Constitution provides for the possibility of State claims for restitution from a public official who causes damage of this nature. The Constitution states:

> "Article 90. The State shall be liable to pay compensation for any wrongful injury attributable to it when caused by acts or omissions by the public authorities. In the event that the State is ordered to pay damages for any such injury sustained as a consequence of wilful or gross misconduct by one of its agents, the former shall be liable to proceed against the latter to recover the said damages."

This mechanism ensures that compensation for damage paid by the State does not become a screen for the illegal activities of some of its officials.

125. Articles 43 to 55 of the Code of Criminal Procedure, deal with criminal indemnification proceedings as part of ordinary criminal proceedings, in the following terms:

> "Individual or collective criminal indemnification proceedings for compensation for damage or injury caused by punishable acts may be brought before the civil courts or as part of criminal proceedings, at the discretion of the injured parties, whether natural persons or

> legal entities, or by their heirs or successors, or by the Government Procurator's Office or the Ombudsman when collective interests are affected."

126. The Constitutional Court has ruled that, in military criminal procedure, it shall be mandatory for criminal indemnification proceedings to be brought as part of the military criminal proceedings so that the victims or their relatives may by this means claim compensation for the damage caused. It should also be noted that a reform of the Code of Military Criminal Justice is currently in progress whereby criminal indemnification proceedings become mandatory within that system.

127. Lastly, as a means of creating a comprehensive system of compensation for damage caused by violations of human rights by public officials, the Government is preparing a bill for submission to the legislative chambers whereby it will be empowered to pay compensation recommended by intergovernmental human rights organizations.

128. Act No. 9 of 1979 and its implementing regulations govern medical and scientific experimentation in Colombian territory. They contain rules for the replacement of organs, tissues and cells, establish the rights and obligations of donors and govern the operation of "organ banks". Article 19 of Decree No. 2642 of 1980 authorizes the use of the available body parts of a corpse "in order to extend or preserve the lives of other individuals or for purposes of 'scientific research', provided there has been a diagnosis of brain death". Article 10 of Decree No. 03 of 1982 relates to the donation of paired organs by living individuals for immediate transplantation.

Article 8

129. Prohibition of slavery, servitude and forced labour and protection against such practices. Slavery was abolished in Colombia in the mid-nineteenth century, through Act No. 21 of 1851, under the Government of President José Hilario López. Slavery has been explicitly or implicitly prohibited in all Constitutions promulgated since then.

130. Article 17 of the 1991 Constitution prohibits slavery in the following terms:

> "Article 17. Slavery, servitude and the slave trade in all forms are prohibited."

Article 25 of the 1991 Constitution stipulates that work is a right and a social obligation and enjoys the special protection of the State. Article 26 of the Constitution protects the freedom to choose a profession or occupation.

131. Article 5 of the Substantive Labour Code defines work as follows:

> "Article 5. For the purposes of this Code, work is understood to be any free human activity, whether physical or intellectual, permanent or temporary, consciously performed by one natural person in the service of another, whatever its purpose, provided it is performed in fulfilment of a labour contract."

132. Article 52, paragraph 5, of the Substantive Labour Code protects workers' dignity in the framework of the special obligations laid down for employers with regard to their workers:

> "Article 57. Absolute respect for the worker's personal dignity, and his beliefs and feelings.
>
> Article 59, paragraph 9, prohibits employers from 'committing or authorizing any act that undermines or restricts workers' rights or offends their dignity'."

133. Article 53 of the Constitution protects the rights of workers, stating that "Labour law, contracts, agreements and conventions may not impair the freedom, human dignity or rights of workers." Article 25 of the Constitution, relating to the right to work, reads as follows:

> "Article 25. Work is a right and a social obligation and in all its forms enjoys the special protection of the State. Every person is entitled to a job under decent and fair conditions."

134. Other noteworthy articles of the Substantive Labour Code on the guarantees and rights of workers are article 11, which provides that "disciplinary sanctions cannot consist of corporal punishment or measures that undermine a worker's dignity"; and article 10 on equality of workers, which reads: "All workers are equal before the law and have the same protection and guarantees, for which reason any form of legal distinction between workers on the basis of the intellectual or physical nature of the work or its form or remuneration are abolished, except as otherwise provided by law."

135. Women's equality is guaranteed in article 43 of the Constitution, which states:

> "Article 43. Women and men have equal rights and opportunities. Women may not be subjected to any kind of discrimination."

136. Implementing Decree No. 1398 of 1990 stipulates:

> "There shall be no discrimination against women in employment. Women shall therefore be given treatment equal to that of men in all aspects of work, employment and social security, especially in connection with:
>
> (a) Equal opportunity for access to any type of employment;
>
> (b) Equality of rights and obligations in relation to all types of occupations;
>
> (c) Equal criteria for competition and selection for posts and for joining the labour market;
>
> (d) Freedom to choose one's profession, occupation and type of training;

(e) Equality in matters of remuneration, benefits and performance evaluations;

(f) Equality with regard to social security, working conditions and other existing systems of protection;

(g) Equality in respect of marriage, family relations, civil status and social services relating to responsibility for rearing and educating children; and

(h) Equal protection during pregnancy, childbirth and the period following the birth.

Additional paragraph: Public and private competitive examinations for obtaining employment shall be held on the basis of equal opportunity for men and women. The labour authorities shall be responsible for enforcing this provision and applying the corresponding penalties in accordance with Act No. 11 of 1984."

137. It should be noted that the above-mentioned Decree gives effect to Act No. 51 of 1981, which incorporated the Convention on the Elimination of All Forms of Discrimination against Women, adopted by the United Nations in 1979, into domestic law.

138. In labour matters, Colombia ratified International Labour Organization Convention No. 111 concerning discrimination in respect of employment and occupation through Act No. 22 of 1967.

139. The fundamental rights of minors are provided for in the Minors' Code, which was issued by the Colombian Government in Decree No. 2737 of 1989 and whose objectives are:

(a) To enforce the basic rights of children;

(b) To determine the guiding principles for legislation for the protection of children, both to prevent and correct irregular situations;

(c) To determine the irregular situations in which minors might find themselves, including the source, characteristics and consequences of every such situation;

(d) To determine the steps to be taken for the protection of minors in irregular situations;

(e) To indicate the competent bodies and appropriate procedures for guaranteeing the rights of minors;

(f) To establish and restructure the services for the protection of minors in irregular situations.

140. The following articles of the Code relate to child labour:

> "Article 14. Every minor is entitled to protection against economic exploitation and the performance of any work that might be dangerous for his physical or mental health or prevent his access to education.
>
> The State shall ensure that the provisions of this instrument on child labour are implemented."

In connection with this article, it should also be mentioned that article 44 of the Constitution stipulates that children shall be protected against any form of neglect, exploitation at work, economic exploitation and hazardous work.

141. Article 237 of the Minors' Code states: "A minor working under conditions not authorized by law is understood to be a person under 12 years of age performing any type of work or a child between the ages of 12 and 18 performing labour that is explicitly prohibited by law and not included in the exceptions laid down in this section."

142. With regard to work prohibited for minors, article 245 of the Minors' Code lists types of work in which minors may not be employed because of exposure that is considered to be dangerous for their health or physical integrity. Article 246 of the Code stipulates that workers under 18 years of age are prohibited from performing any work detrimental to their morals. In particular, they are prohibited from working in brothels and other places of entertainment where alcoholic beverages are consumed. Similarly, they may not be hired to enact pornographic scenes, scenes involving violent death or endorsing crime or the like.

143. With regard to work in mines, article 4 of Implementing Decree No. 1335 of 1987 states:

> "Article 4. Women of all ages and males under the age of eighteen (18) are prohibited from working in underground mining activities.
>
> Additional paragraph: An exception is made for women performing supervisory and management tasks in mines."

144. Concerning the prohibitions relating to employers in respect of minors, article 260 of the Minors' Code provides that, in addition to the prohibitions laid down in article 59 of the Substantive Labour Code, "under age workers may not be dismissed during pregnancy or breast-feeding, without authorization from the officials responsible for the monitoring and supervision of child labour". The same article prohibits employers of workers under 18 years of age from transferring them away from the place in which their domicile is located, without the consent of their parents or guardians or, failing these, the *defensor de familia* (family ombudsman), except on a temporary basis and solely for the purpose of participating in training programmes.

145. Similarly, with regard to the exploitation of others and to the traffic in persons, articles 308, 309, 310, 311 and 312 of Section V of the Code of Criminal Procedure, entitled "Procuring", criminalize

inducement to prostitution, forced prostitution, the traffic in women and minors, and the encouragement of minors to prostitute themselves.

146. As to situations in which one person is dependent on another, in such cases as drug trafficking, articles 35 and 37 of Act No. 30 of 1986, adopting the National Statute on Narcotic Drugs, read:

> "Article 35. Anyone who encourages or promotes the unlawful use of drugs of medicaments that produce dependency shall be liable to 3 to 8 years' imprisonment.
>
> Article 37. Anyone who supplies, administers or facilitates the use by a minor under 16 years of age of drugs producing dependency or encourages such use shall be liable to 6 to 12 years' imprisonment."

147. In relation to compulsory military service, article 10 of Act No. 48 of 1993 stipulates that all Colombian men are under an obligation to perform military service from the date on which they reach the age of majority (18 years). The obligation ends when they have reached the age of 50. The paragraph to the article states that women may perform voluntary military service, which becomes compulsory "when the circumstances of the country so require and the Government so decides". The Act provides that military service lasts between 12 and 24 months, "as determined by the Government". Indigenous people residing in their own territory and preserving their cultural, social and economic integrity in accordance with article 27 of the Act are exempt from military service at all times. Violators of the Act are liable to monetary penalties and/or the penalties provided for in the criminal legislation or the Disciplinary Regulations for the Armed Forces.

148. Colombian legislation on compulsory military service does not provide for the possibility of conscientious objection to the performance of compulsory military service. Remedies of protection have been filed on several occasions to ask the court to rule on conscientious objection, but to date the Constitutional Court has repeatedly refused to allow it, on the basis of the constitutional and legal provisions in force.

Article 9

149. Right to liberty and security of person, guarantees against arbitrary arrest or detention and guarantees of due process. Personal dignity is one of the foundations of modern-day criminal proceedings. Any citizens involved in criminal proceedings enjoy guarantees of respect for their human rights.

150. The section of the 1991 Constitution on fundamental rights states the following with regard to the right to security of person:

> "Article 28. All persons are free. No one may be subjected to interference with his person or his family, to arrest, detention or imprisonment or to having his home searched, except in accordance with a written order from the competent legal authority, in due form and for reasons previously defined by law.

> A person in pre-trial detention shall be placed at the disposal of the competent judge within the next 36 hours so that the latter may make an appropriate determination within the time-limit established by law.
>
> In no case may there be arrest, detention or imprisonment for debts or penalties or security measures that are not subject to the statute of limitations."

151. Article 29 of the 1991 Constitution establishes the minimum requirements for due process:

> "Article 29. Due process shall apply in all legal and administrative proceedings.
>
> No one may be tried except in conformity with the relevant laws that predate the act of which the person is accused, before a competent court or tribunal and in accordance with the procedure appropriate to each case.
>
> In criminal matters, permissive or favourable laws, even if they postdate the act, shall be applied in preference to restrictive or unfavourable laws.
>
> Everyone is presumed innocent until proven guilty according to law. Anyone who is a accused is entitled to the right of defence and to the assistance of counsel of his own choosing or assigned by the court during the investigation and trial; to a fair and public hearing without undue delay; to submit evidence and to examine witnesses for the prosecution; to challenge a conviction; and not to be tried twice for the same act.
>
> Evidence obtained in violation of due process is null and void as of right."

152. The Code of Criminal Procedure, contained in Decree No. 2700 of 1991 and Act No. 81 of 1993, governs the rules of criminal procedure in force in Colombia. Title I, article 1, which contains guidelines for criminal proceedings, reads:

> "Article 1. Due Process. No one may be tried except in conformity with the relevant laws that predate the act of which he is accused, before a competent court or tribunal and in accordance with the procedure appropriate to each case. Anyone who is accused is entitled to the right of defence and the assistance of counsel of his own choosing or assigned during the investigation and trial; to a fair and public hearing without undue delay; to submit evidence and to examine witnesses for the prosecution; to challenge a conviction; and not to be tried twice for the same act."

153. The Code of Criminal Procedure governs the following elements of due process:

> Presumption of innocence;

Respect for human dignity in the conduct of criminal proceedings;

Recognition of the fundamental right to liberty of person;

Access to the remedy of habeas corpus;

Principle of the adversarial procedure;

Public nature of criminal trials;

Purpose of the criminal procedure;

Principle of the applicability of favourable criminal law and procedural rules;

Protection of victims and witnesses;

Principle of *res judicata* in criminal cases;

Principle of two-tiered jurisdiction in criminal proceedings;

Principle of cost-free criminal proceedings;

Principle of equality before the law.

154. Article 4 of the Code defines the circumstances under which a person may be deprived of liberty:

> "*Article 4*. Everyone is entitled to respect for his liberty. No one may be subjected to interference with his person or his family, or deprived of his liberty or have his house searched, except in accordance with a written order from the competent legal authority, in due form and for reasons previously defined by law."

155. This article gives effect to the legal principle known as "*favor libertatis*", according to which it is a general rule that everyone is entitled to liberty and liberty may be restricted only in a limited number of cases owing to the seriousness of the act in question or when absolutely necessary to ensure that criminal legislation is enforced.

156. Article 41 of the Criminal Code distinguishes between two types of deprivation of liberty: imprisonment, the maximum duration of which is 60 years; and short-term imprisonment, which may last up to five years. Article 396 provides for house arrest for cases carrying a minimum penalty of five years' imprisonment or less and stipulates that, due allowance being made for the family and work situation of the accused and his ties to the community, he must appear at the trial. Article 397 relates to pre-trial detention and provides that time spent in pre-trial detention counts as time served for the purpose of the sentence. In order to claim immediate protection of the fundamental right to liberty, both article 30 of the Constitution and article 5 of the Code of Criminal Procedure provide as follows for the remedy of habeas corpus:

> "Article 30. Anyone who is deprived of his liberty and believes it to be unlawful is entitled to apply at any time to any judicial authority for habeas corpus on his own or through a third party and the judicial authority shall decide within 36 hours on the lawfulness of the detention."

157. Article 430 of the Code, as amended by article 2 of Act No. 15 of 1992, monitors the lawfulness of detention as follows:

> "Article 430. Habeas corpus is a public remedy that provides for the protection of personal liberty when an individual is arrested in violation of constitutional or legal guarantees or when deprivation of liberty is unlawfully extended. Applications for release by individuals lawfully deprived of liberty must be made in accordance with the appropriate procedure."

158. Article 431 states the following in connection with habeas corpus:

> "Article 431. Everyone shall be entitled to the following guarantees:
>
> 1. To apply to any judge or magistrate in the place where the unlawful arrest occurred or place closest to it so that the judge or magistrate may decide within the next 36 hours at the latest whether his release shall be ordered. The application may be submitted to any judicial officer, but the proceedings are conducted exclusively by the criminal judge.
>
> 2. To have the remedy applied for by third parties on the person's behalf, with no need for a power of attorney.
>
> 3. Not to have the proceedings suspended or postponed on account of holidays or court recesses."

159. Title III of the Code of Criminal Procedure governs arrest, security measures and release on bail. The following articles are worthy of mention:

> "Article 377. Rights of the arrested person. Every person arrested shall immediately be informed, in writing of the following:
>
> 1. The reasons for the arrest and the officer who ordered it;
>
> 2. His right to meet immediately with a lawyer;
>
> 3. His right to indicate the person to be informed of the arrest. The person responsible for the arrest shall immediately communicate the arrest to the person indicated;
>
> 4. His right, during the preliminary investigation, to provide his own account of the acts of which he is accused and his right to remain silent with respect to the charge. The account may be given only with counsel present.
>
> 5. His right not to be held incommunicado."

> "Article 379. Committal of an arrested person. A person arrested in accordance with a written order shall immediately and directly be placed at the disposal of the judicial officer who ordered the arrest. If this is not possible, he shall be placed at the officer's disposal in the nearest prison, whose warden shall immediately, using the quickest means of communication and, in any event, in writing, so inform the competent judicial officer at the earliest following business hour.
>
> Article 380. Conclusion of the arrest. When it is necessary to incarcerate a lawfully arrested individual in the local prison, the judicial officer under whose orders he is placed shall have a period of no more than 36 hours from the time he learns of the arrest in which to authenticate it. In that event, he shall issue a written warrant to the warden of the respective detention centre instructing him to hold the person in the centre. The warrant shall indicate the grounds for the arrest and the date on which it took place. If the above-mentioned time-limit expires and the warden of the detention centre has not received the committal order, he shall proceed to release the person into the custody of the officer who was to have issued it. Failure to fulfil the obligation laid down in the preceding paragraph shall give rise to the corresponding criminal responsibility.
>
> Article 383. Immediate release for unlawful arrest or extension of deprivation of liberty. When an arrest is made or extended in violation of constitutional or legal guarantees, the officer at whose disposal the arrested person has been placed shall order his immediate release."

160. Articles 385 and 386 of the Code stipulate that "legal status cannot be resolved if an unsworn statement has not previously been received from the accused" and that "the statement must be received as soon as possible, at the latest within the three days following the day on which the person was placed at the prosecutor's disposal".

161. With regard to the definition of legal status, article 387 stipulates:

> "Article 387. When a person has been deprived of his liberty and has made an unsworn statement, or when the above-mentioned time-limit has expired, the judicial officer shall define his legal status in an interlocutory order within no more than five days, together with a security measure if there is reason to justify it, or shall order immediate release. In the latter case, the accused shall sign a statement undertaking to appear before the competent authority when summoned."

162. The security measures provided for in article 388 of the Code of Criminal Procedure include house arrest and pre-trial detention, which were referred to above and are implemented "when there is at least one serious sign of the responsibility of the accused, based on evidence legally produced during the proceedings".

163. Pre-trial detention ordered by a judicial officer once a detainee has been placed at his disposal should not be confused with pre-trial detention as provided for in article 28, paragraph 2, of the Constitution, which reads:

> "Article 28. A person in pre-trial detention shall be placed at the disposal of the competent judge within the next 36 hours so that the latter may make an appropriate determination within the time-limit established by law."

164. While the former is carried out by a judicial officer as a security measure in the context of judicial proceedings against a person in respect of whom there is evidence that he has committed a punishable act, pre-trial detention as set forth in the Constitution is an administrative measure with strict time-limits which is authorized owing to the urgency of the situation and outside the framework of criminal proceedings in the strict meaning of the expression.

165. As to the right of citizens to reparation for unlawful detention, article 414 of the Code of Criminal Procedure stipulates:

> "Article 414. Anyone who has been unjustly deprived of his liberty may ask the State for compensation for loss or injury. Anyone who has been exonerated by a final acquittal or its equivalent because no act was committed, the accused did not commit it or the conduct was not a punishable act is entitled to receive compensation for the pre-trial detention to which he was subjected, provided he has not caused it through a wrongful act or with criminal intent."

Article 10

166. Rights of persons deprived of their liberty. Article 28 of the Constitution contains provisions on personal liberty and security in accordance with the international human rights instruments.

167. Article 3 of the Code of Criminal Procedure faithfully reflects article 10, paragraph 1, of the Covenant:

> "Article 3. Anyone accused of a punishable act shall have the right to be treated with due respect for the inherent dignity of the human person. Internationally recognized human rights standards shall be observed and in no case may those rights be violated."

168. Article 408 of the Code of Criminal Procedure stipulates the following:

> "Article 408. Rights of the person deprived of liberty. Every accused person deprived of his liberty shall be entitled to receive treatment in the place of detention that is consistent with respect for human rights, such as the right not to be subjected to cruel, inhuman or degrading treatment; the right to be examined by an official doctor or, if there is none, by a private doctor, whenever necessary; the right to adequate food; the right to be given every means and opportunity to engage in work or study; and the right to an interpreter in his own language if he should need one when being informed in person of any decision, all of which amounts to respect for his human dignity."

169. With regard to article 9 of the Covenant, this report refers to pre-trial detention as a security measure. Article 400 of the Code provides

that pre-trial detention must be carried out in prisons intended for that purpose and that no one may be detained in an establishment to serve a sentence without an enforceable verdict of guilty; similarly, in cases of wrongful punishable acts, the accused is to be detained in the nearest reformatory and, if there is none, he must be kept in a separate prison cell block.

170. Detention centres are placed in the following categories by articles 20 et seq. of Act No. 65 of 1993 on the National Penitentiary and Prison System:

(a) Prisons are institutions for pre-trial detention intended solely for the detention and supervision of accused persons. In special cases, persons who give themselves up and end their involvement with subversive groups may be detained at their own request in facilities of the security forces;

(b) Penitentiaries are designed for the detention of convicts and the serving of prison sentences; they take a gradual and progressive approach to the treatment of inmates;

(c) Reformatories are used for pre-trial detention and the serving of sentences for offences committed during traffic accidents. Pre-trial detention for punishable acts committed by staff of the National Penitentiary and Prison Institute, criminal justice officials or employees, judicial police officers, elected public servants, officials with legal or constitutional privileges and elderly or indigenous persons takes place in special establishments;

(d) Psychiatric wards are used for housing and rehabilitating persons who cannot be charged owing to mental illness or psychological immaturity, based on an expert examination. Such wards provide assistance and may specialize in the treatment of psychiatric problems or drug addiction;

(e) High-security prisons and penitentiaries are used for accused and convicted persons whose detention and treatment require high security, without prejudice to the resocializing purpose of the sentence;

(f) Women's detention centres are used for the detention and serving of prison sentences by female offenders;

(g) Prisons for members of the security forces. Members of the security forces are held in pre-trial detention in centres established especially for them or, should there be no such centres, in the facilities of their own units. Special rules apply to their organization and management;

(h) Prison farms are establishments for serving sentences, preferably for convicts from peasant backgrounds or to encourage agricultural education.

171. Article 30 of the above-mentioned Act No. 65 of 1993 prohibits the detention in prison of minors under 18 years of age; if, owing to special circumstances outlined in that Act, they must be placed in a closed institution, but no such institution exists, they may be held in an annex or special cell block set up specifically for that purpose in a detention centre

with a special regime, in accordance with article 44 of the Constitution and the Minors' Code. In exceptional cases and at the discretion of the competent judicial authority, minors may be detained in a special security cell block. The main purpose of the measures applicable to minors who have committed, or acted as co-perpetrators to, a criminal offence is rehabilitation, while the specific objectives are the resocialization and reintegration of juveniles into society.

172. The Minors' Code has put the Colombian Family Welfare Institute (ICBF) in charge of the rehabilitation of juvenile offenders. The Institute directs and coordinates the National Executive Committee, which is composed of all State bodies responsible for each stage of the process and is headed by the Ministry of Justice and Law; it has four specific activities:

(a) To serve as the coordinating body for reforms of the chapter of the Minors' Code on juvenile offenders;

(b) To evaluate the 34 institutions housing juvenile offenders;

(c) To coordinate, together with other Committee members, the training of officers in charge of institutions housing juvenile offenders;

(d) To design a policy for the prevention of juvenile delinquency and criminality that will enable each of the public bodies in the Committee to organize activities aimed at reducing and attacking the problem of juvenile delinquency.

173. The Prevention and Conciliation Department in the Ministry of Justice and Law must assist local mayors' offices in designing a comprehensive prevention plan for implementing the various actions and strategies. The members of the Executive Committee are as follows: Ministry of Justice and Law; Ministry of Labour; Ministry of Education; National Planning Department; Attorney General's Office; Juvenile Police; Presidential Council on Social Policy; National Apprenticeship Service; and Colombian Sports Institute.

174. Resocialization means that, for the duration of the measure, whatever its nature, members of the programme's interdisciplinary team will work with minors on what has been called the "teaching project" or the "life project".

175. With regard to the measures designed to speed up the processing of charges against minors, article 187 of the Minors' Code states:

> "Article 187. Within five days of receipt of the minor's plea, the judge, based on his assessment of the minor's family situation and personality, shall take an immediate decision on his status, adopt the provisional measures referred to in article 204 and, if necessary, order the minor to be sent to an observation centre in which the appropriate security is provided.
>
> Prior to taking any step whatsoever, the judge must in all cases interview the minor in person and in private so as to become acquainted with his personal history, character and the socio-familial circumstances of his environment."

176. It should be noted that anyone who is deprived of his liberty or released on the order of the competent authority must be reported within 24 hours, together with proof of his identity and legal status to the National Penitentiary and Prison Institute (INPEC), where he will be registered in the National Information System on Detainees and Convicts.

177. All detainees and convicts are entitled to exercise their constitutional rights of petition, information and complaint, in accordance with article 58 of the Penitentiary and Prison Code. Upon entering the place of detention, they receive information on the institutional regime, their rights and obligations and disciplinary rules and procedures for filing petitions and complaints. It is the obligation of every prison warden to guarantee the rights of detainees, as embodied in the Code of Criminal Procedure, as well as to inform the competent authority of their admission.

178. Titles VII, VIII and IX of the Penitentiary and Prison Code relate to the work, education and learning, social and health-care services that are to be provided to the prison population in every prison. INPEC's Treatment and Development Section is in charge of implementing all prisoner resocialization programmes, based on the following guidelines:

(a) The step-by-step treatment system is based on providing the participating officials with technical knowledge of the programme and training them to implement its different phases, as follows:

(i) Development of the convicted prisoner's psychological and socio-legal profile;

(ii) Development of the psycho-social profile of the officials participating in the programme;

(iii) Training in the different stages of the step-by-step treatment system;

(iv) Set-up and operation of the system through the formulation of health, education, social welfare, labour and prevention policies;

(b) Mixed-economy "Renaissance" companies. The primary function of these companies, which are sponsored by the Ministry of Justice, is to produce and market the goods and services produced in detention centres, in accordance with article 91 of Act No. 65 of 1993;

(c) Development of micro-enterprises as a labour and economic strategy in prisons. This government project, which is already under way, will help rationalize prison labour. It is a part of the Government's productive employment policy and is also in keeping with the resocialization objectives set in Act No. 65 of 1993.

Article 11

179. Prohibition on imprisonment for contractual obligations. The last paragraph of article 28 of the Constitution on personal liberty and pre-trial

detention states that in no case may there be arrest, detention or imprisonment for debts or penalties or security measures that are not subject to the statute of limitations. The Constitution thus complies with the provisions of article 11 of the Covenant. Because of its nature as an absolute prohibition for the State, this constitutional guarantee does not require any type of regulation by law and can therefore be directly and immediately applied by the courts.

Article 12

180. Freedom of movement. This includes the right to freedom of movement within the territory of the State, the right to leave any country and freedom to choose one's residence.

181. The new Constitution and the new Criminal Procedure Statute contained in Act No. 81 of 1993 and Decree No. 2241 of 1993 introduced changes relating to articles 12 and 13 of the Covenant. The requirement embodied in these provisions of the Covenant is set forth in article 24 of the Constitution, which states:

> "Article 24. Within the limits established by law, all Colombian citizens are entitled to move about freely within the national territory, to enter and leave the country and to remain and reside in Colombia."

This principle is necessarily applicable to foreigners as well, since article 100 of the Constitution expressly states that:

> "Article 100. Aliens in Colombia shall enjoy the same civil rights as Colombian citizens. In the interests of public order, however, the law may impose special conditions on or nullify the exercise of specific civil rights by aliens. Within the territory of the Republic, aliens shall likewise enjoy the guarantees granted to citizens, within the limits established by the Constitution or the law."

182. Political rights are reserved for citizens, but the law may grant foreign residents of Colombia the right to vote in municipal or district elections and referendums. This egalitarian approach enables foreign residents to enjoy all the fundamental rights and guarantees provided for by Title II of the Constitution. The only restriction relates to the exercise of political rights, as listed in article 172 of the National Police Code:

> "Article 172. The following political rights may not be exercised by aliens:
>
> 1. To vote in popular elections;
>
> 2. To be elected President of the Republic, member of either Chamber of Congress or deputy in Departmental and Municipal Assemblies;
>
> 3. To hold any public office involving authority or jurisdiction;

4. To participate in the organization or operation of political parties, their agencies or their committees;

5. To participate as a speaker in public meetings of a political nature;

6. To make financial contributions either to political parties or to the political campaigns of any candidate for the Presidency or for public corporations created by popular vote."

183. The constitutional principle of freedom of movement throughout the territory is given effect in articles 96 to 101 of the National Police Code:

> "Article 96. No permit is necessary from the authorities to move about within the national territory.
>
> Article 97. Colombians and foreigners may leave the country and return to it without any requirements other than an international identity document or passport, except as provided for by special laws, such as tax and criminal laws.
>
> Article 98. The police must protect freedom of transport and vehicle traffic.
>
> Article 99. Regulations may not limit the exercise of freedom of movement with regard to inland vehicle and pedestrian traffic, except in order to guarantee public safety and health.
>
> Article 100. Inland traffic may be subject to national and local regulations.
>
> Article 101. All inhabitants of the national territory are free to choose a permanent or temporary place of residence."

184. A prohibition on residing in or being restricted to a given place may be imposed only as a penalty or remedial measure in cases provided for by law, but this does not affect compliance with legal or statutory restrictions for the protection of public safety, peace and health. Restrictions on these rights are specifically defined and applied exceptionally in situations involving public safety and health. The restrictions that can be imposed on freedom of movement during states of emergency on the basis of the provisions of Statutory Act No. 137 on States of Emergency were noted above in connection with article 4 of the Covenant. Other restrictions are provided for in articles 42 and 57 of the Criminal Code, which make house arrest an accessory penalty for certain offences. Under article 508 of the Code of Criminal Procedure, however, the enforcement of this measure is, the responsibility of the Government Procurator's Office.

185. The penalty of deportation is prohibited by article 34 of the 1991 Constitution, from which it must be concluded that a Colombian may in no case be expelled from the national territory:

> "Article 34 - Deportation, life imprisonment and confiscation of property are prohibited.
>
> However, ownership of property acquired through unlawful means may be forfeited by court order if it involves a loss of public revenue or seriously undermines public morals."

186. Nationals have absolute freedom to leave the country as long as they possess the documents required by the authorities of the country of destination, such as passport, visa, tourist card and/or identity card. There is no restriction on them returning to Colombia whenever they wish.

187. The right of foreigners to enter, reside in and leave the national territory is regulated by Decree No. 2341 of 1993, which recognizes the Government's interest in encouraging immigration for commercial, economic, scientific, technological, professional and tourism-related purposes. It provides for eight categories of entry and residence visas, i.e. diplomatic, official, service, courtesy, business, temporary and immigrant resident, in addition to the entry permit, which places practically no restrictions on tourists, journalists, artists, athletes and the like, granting them free entry and movement without any visa requirements for up to 90 days, which can be extended for equal periods.

Article 13

188. Protection of foreigners from arbitrary expulsion. Colombian legislation contains several regulations on the treatment and supervision of foreigners, as a consequence of the fundamental principle of the legal equality of Colombians and aliens embodied in article 100 of the Constitution and endorsed by article 18 of the Colombian Civil Code and article 57 of the Political and Municipal Regime Code.

> Colombian Civil Code: "Article 18. The law is binding on both nationals and foreign residents of Colombia."
>
> Political and Municipal Regime Code: "Article 57. The laws are binding on all inhabitants of the country, including resident and non-resident aliens, except, in respect of the latter, for the rights granted by public treaties."

189. As to the forced departure of aliens from the national territory, national criminal and administrative regulations provide for two categories: deportation and expulsion.

190. Deportation, which is an administrative procedure, applies to aliens in the cases covered by article 58 of Decree No. 2241 of 1993 (annex 35). It is imposed by means of a substantiated decision by the Director of the Aliens Section of the Administrative Security Department (DAS) and its Section Directors. The alien concerned must be informed of this decision in person, so that he may exercise his right of defence by applying for the remedies

provided for by the administrative rule; until a decision has been taken on these remedies, the deportation cannot be carried out. The application must be submitted within five days of the notification of the decision, as stipulated in Decree No. 1 of 1984.

191. The grounds for deportation referred to in article 58 of Decree No. 2241 are the following:

(a) Entering the country without complying with the entry regulations;

(b) Having been fined at least twice in one year and being unwilling to pay the fine;

(c) Staying in the country beyond the authorized period;

(d) Obtaining a visa through fraud or simulation in signing an employment contract, making a false statement or submitting documents that lead immigration authorities to erroneous certification control and registration;

(e) Not renewing, changing or requesting a visa while under an obligation to do so or engaging in an activity not authorized by the entry permit.

The Colombian immigration authorities must place the deportee at the disposal of the authorities of his country of origin or of the country in which he was last domiciled.

192. Deportation does not necessarily mean that the alien concerned can never return to Colombian territory, since Decree No. 2241 of 1993 provides that the authority ordering the deportation may, in the same decision, indicate the period after which the deportee may return.

193. Expulsion is an administrative measure that can be applied as an accessory penalty in criminal matters. As an administrative penalty, it is applied following an investigation and on the basis of a substantiated decision by the DAS Aliens Section, as provided for and regulated by article 61 of Decree No. 2241 of 1993, which explicitly lists the only grounds for expulsion through administrative channels:

(a) Having been sentenced to a prison term that does not also include expulsion from the national territory as an accessory penalty;

(b) Taking part in or committing acts that threaten the existence and security of the State or disturb public order;

(c) Engaging in illicit drug trade or traffic, procuring or generally anti-social behaviour;

(d) Engaging in illegal trade in weapons or equipment intended for the exclusive use of the armed forces;

(e) Returning to the country before the end of the period specified in the deportation order;

(f) Having been convicted as a common criminal in foreign territory and having been unable to be tried in Colombia owing to the lack of jurisdiction.

194. Aliens may file an appeal against such a decision as permitted by law, within five days of being notified thereof; as long as the appeal is pending, the expulsion order is suspended.

195. As a penalty, deportation must be ordered by the judge in the sentence by which the alien is convicted of an offence, as provided in article 42 of the Colombian Criminal Code. Once the main sentence for the offence has been served, the judge must place the alien at the disposal of the DAS to carry out the expulsion. Article 508, paragraph 5, of the Code of Criminal Procedure on the expulsion of an alien by way of an accessory penalty states:

> "The following procedure shall be applicable in the event of the expulsion of aliens from the national territory:
>
> (a) Once the custodial sentence has been served, the visiting magistrate will place the alien at the disposal of the DAS to expel him from the national territory; and
>
> (b) In the act ordering unconditional release, as referred to in article 75 of the Criminal Code, the arrest shall be ordered and, once it has been carried out, the DAS shall be notified so that it can expel him from the national territory."

196. With regard to the expulsion of an alien from the territory, the National Police Code provides as follows:

> "Article 174. The penalty of expulsion may not be enforced until five days after the day on which the judgement or decision imposing the penalty was handed down.
>
> Article 175. The penalty of expulsion may be applied only as a judgement rendered during a criminal trial, by which it is authorized. It may also be applied through a substantiated decision by the legally competent police authority, but only if the alien has exercised political rights prohibited to him or has violated the terms under which he was granted entry, as long as these appear in writing, even if they are not in the passport, and as long as there is written proof that the holder of the permit had been duly informed of those conditions.
>
> Article 176. Decisions by the police authority to impose the penalty of expulsion may be appealed through administrative law proceedings before the Council of State, which may act within five days of notification of the decision imposing the penalty.
>
> Once the alien has been expelled, he may return to Colombia only with a visa authorized by the Ministry of Foreign Affairs (art. 63 of Decree

> No. 2241 of 1993). If he returns without complying with that requirement, he is guilty of the offence punishable by article 185 of the Criminal Code."

197. Article 185 of the Criminal Code reads:

> "Article 185. Illegal re-entry. Anyone who re-enters Colombia after expulsion based on a decision of a competent authority, but who has failed to comply with the legal requirements for re-entry, shall be liable to a prison sentence of six months to two years.
>
> Once the sentence has been served, he shall be expelled again."

198. Articles 174 to 177 of the National Police Code also regulate and protect the status of an alien who has been expelled by providing that the judge or official who orders or carries out an expulsion without complying with the legal requirements is guilty of the offence of abuse of authority, which is punishable under article 152 of the Criminal Code and against which individuals are protected by article 92 of the Constitution:

> Criminal Code: "Article 152. Abuse of authority by means of an arbitrary or unjust act. An official employee who, except in the special cases stipulated as offences, commits an arbitrary or unjust act in the performance of his duties or exceeds his mandate in so doing shall be liable to a fine of 1,000 to 10,000 pesos and to deprivation of his rights and public duties for six months to two years."

199. Both in these matters and in the operational activities it is to carry out by law, the DAS is helped by the Government's commitment to ensuring the greatest possible efficiency in the civil service and to respecting and guaranteeing the fundamental rights of nationals and aliens.

Article 14

200. Principle of equality before the law, guarantees of due process and principles governing the administration of justice. The 1991 Constitution contains a special chapter on the judiciary, starting with article 228. In this part of the report, the structure and organization of the judiciary will be emphasized on the basis of the provisions of Act No. 270 of 1996 (Statutory Act on the Administration of Justice - see annex 36) which was adopted and promulgated on 7 March 1996. As a Statutory Act, its constitutionality was reviewed by the Constitutional Court prior to its adoption. The Court found some of the articles adopted by Congress to be unenforceable; they are consequently not in force and obviously cannot be applied.

201. Act No. 270 (Statutory Act on the Administration of Justice) is Colombia's new general statute of justice. As a Statutory Act, it is certain to be implemented by other regulations or by administrative decisions or regulatory decrees issued by the President of the Republic in the exercise of the regulatory powers vested in him by article 189, paragraph 11, of the Constitution:

> "Article 189. As Head of State, Head of Government and supreme administrative authority, the President of the Republic shall:
>
> ...
>
> 11. Exercise regulatory powers by issuing the decrees, decisions and orders necessary to enforce the laws."

202. With the Statutory Act on the Administration of Justice, the Colombian Government has completed its drafting of pending legislation to give effect to the provisions of the 1991 Constitution. It is likewise ensuring its compliance with its international commitments under international human rights law. Act No. 270 defines the guarantees of the independence of the judiciary, rules and procedures on appointments, judicial careers and the promotion of judges, and contains specific regulations on special courts, constitutional guarantees for the protection of the fundamental right of access to the administration of justice and procedures for making judicial proceedings public. A detailed summary of the provisions of the Statutory Act on the Administration of Justice, on the basis of General Comment 13 (21) of the Human Rights Committee, will make it possible to evaluate the current situation, as well as the elements that the Government has still to work on in the near future.

203. Equality of all persons before the law and before the courts. The principle of equality before the law, which guarantees citizens equal legal treatment and which had its origins in the French Revolution, has always been recognized as law in the Colombian legal system.

204. Article 13 of the Constitution states the following:

> "Article 13. All persons are born free and equal before the law, shall be given equal protection and treatment by the authorities, and shall enjoy the same rights, freedoms and opportunities without any discrimination on grounds of sex, race, national or family origin, language, religion, political opinion or philosophy.
>
> The State shall promote the conditions necessary to ensure that equality is real and effective and shall adopt measures in support of groups that are discriminated against or marginalized.
>
> The State shall provide special protection for those persons who, on account of their economic, physical or mental condition, are in obviously vulnerable circumstances and shall punish any abuse or ill-treatment to which they may be subjected."

205. Article 8 of the Criminal Code, which appears in the general section on the guiding principles of Colombian criminal law, states the following:

> "Article 8. Equality before the law. Criminal law shall be applied without taking account of any considerations other than those established therein."

206. The provisions of Colombian criminal law thus give effect, in criminal matters, to the principles of equality before the law embodied in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the *American Convention on Human Rights*.

207. As to civil law, article 37, paragraph 2, of the Code of Civil Procedure provides that it is the duty of the judge to ensure the equality of the parties to the proceedings, using the powers granted to him by the Code. Civil judges must interpret this rule on the basis of the constitutional provisions on fundamental rights. It should be noted that the Constitution considerably postdates the promulgation of the Code of Civil Procedure. A similar provision is contained in article 10 of the Substantive Labour Code on the equality of all workers before the law.

208. With regard to the independence of the judiciary, Title VIII of the Constitution starts by establishing it in article 228:

> "Article 228. The administration of justice is a State function. Its decisions are independent. Proceedings shall be public and permanent, with the exceptions established by law, and substantive law shall prevail. Time-limits for the proceedings shall be scrupulously observed and failure to comply with them punished. The functioning of the judiciary shall be decentralized."

209. These constitutional provisions are further developed in article 5 of the Statutory Act on States of Emergency:

> "Article 5. Autonomy and independence of the judiciary. The judiciary is independent and autonomous in the exercise of its constitutional and legal function of administering justice.
>
> No higher-ranking official in the administrative hierarchy may insinuate, demand, influence or advise a judicial officer by telling him which decisions or criteria to adopt."

210. In accordance with these provisions of the Constitution, Title IV of the Statutory Act on the Administration of Justice contains the basic rules on the administration, management and monitoring of the judiciary. The Supreme Council of the Judiciary is responsible for administering the judicial branch and carrying out disciplinary functions. To this end, it is divided into two chambers, administrative and disciplinary. The judges of the administrative chamber are elected by the Supreme Court of Justice, the Constitutional Court and the Council of State; the judges of the disciplinary chamber are elected by the Congress of the Republic from shortlists prepared by the Executive, i.e. by the Government. The judges of both chambers serve for fixed eight-year terms. The Statutory Act on the Administration of Justice also governs the composition and functions of the section councils of the judiciary. For the administration of the judiciary, the Executive Judicial Administration Office has been set up as part of the Supreme Council of the Judiciary and its functions are defined by article 99 of the Statutory Act. The judiciary enjoys autonomy in terms of administration, budget and expenditures.

211. The Statutory Act on the Administration of Justice governs the procedures for the selection, appointment, promotion and judicial careers of the officials and employees of the branch, which are administered autonomously and independently by the Supreme Council of the Judiciary on the basis of the above-mentioned legal provisions. It is apparent from the provisions of the Act that, now that it is in force, the minimum requirements defined by the International Covenant on Civil and Political Rights and the Constitution are being complied with satisfactorily.

212. Other aspects of the implementation of the provisions of article 14 of the Covenant are described below, on the basis of the constitutional and legal provisions in force in Colombia.

213. The right to due process is guaranteed by article 29 of the Constitution, which lays down the general principles given effect in the Code of Civil Procedure, the Criminal Code, the Labour Code, the administrative proceedings code and in administrative and disciplinary proceedings.

> "Article 29. Due process shall apply in all legal and administrative proceedings.
>
> No one may be tried except in conformity with the relevant laws that predate the act of which the person is accused, before a competent court or tribunal and in accordance with the procedure appropriate to each case.
>
> In criminal matters, permissive or favourable laws, even if they postdate the act, shall be applied in preference to restrictive or unfavourable laws.
>
> Everyone is presumed innocent until proven guilty according to law. Anyone who is accused is entitled to the right of defence and to legal assistance of his own choosing or assigned by the court during the investigation and trial; to a fair and public hearing without undue delay; to submit evidence and to examine witnesses for the prosecution; to challenge a conviction; and not to be tried twice for the same act.
>
> Evidence obtained in violation of due process is null and void as of right."

214. In Colombia, criminal, civil and labour trials, as well as administrative disciplinary proceedings, offer guarantees both for the defendants and for the other persons involved. The following provisions of the Code of Criminal Procedure may be referred to in this regard:

> "Article 1. Due process. No one may be tried except in conformity with the relevant laws that predate the act of which he is accused, before a competent court or tribunal and in accordance with the procedure appropriate to each case. Anyone who is accused is entitled to the right of defence and to legal assistance of his own choosing or assigned

> to him by the court during the investigation and trial; to a fair and public hearing without undue delay; to submit evidence and to examine witnesses for the prosecution; to challenge a conviction; and not to be tried twice for the same act.
>
> Article 10. Benefit. In criminal and substantive criminal proceedings, permissive or favourable laws, even if they postdate the act, shall be applied in preference to restrictive or unfavourable laws."

215. With regard to a person's right "to a fair and public hearing", as embodied in article 14, paragraph 1, of the Covenant, article 8 of the Code of Criminal Procedure stipulates that "During criminal proceedings, the investigation shall be conducted solely of persons not on trial and the proceedings shall be public". Similarly, article 291 states: "Testimony in public hearing. Testimony to be given in public hearing shall be given orally and may be taken and recorded by any electronic, mechanical or technical means in general so that it may be reviewed as many times as necessary, all of which shall appear in the records".

216. Article 213 of the Constitution calls for the declaration of a state of internal disturbance in order to deal with the causes of the disruption of public order threatening institutional stability and the security of the State. However, the last paragraph of this article specifies that, "in no case may civilians be investigated or tried by military courts". Article 214, paragraph 2, of the Constitution provides that "neither human rights nor fundamental freedoms may be suspended. The rules of international humanitarian law shall be respected in all cases. Statutory law shall regulate the powers of the Government during states of emergency and establish judicial controls and guarantees in order to protect rights in accordance with international treaties. The measures to be adopted must be proportional to the seriousness of the acts".

217. In relation to article 14, paragraph 2, of the Covenant, the presumption of innocence is guaranteed in general terms in article 29 of the Constitution and specifically in article 2 of the Code of Criminal Procedure, which states that "In criminal proceedings, the principle of the presumption of innocence prevails, by which everyone is presumed innocent and shall be treated as such until a final court order as to his criminal liability has been produced".

218. With regard to the minimum guarantees in criminal proceedings called for in article 14, paragraph 3, of the Covenant, in addition to those contained in article 29 of the Constitution, the Code of Criminal Procedure provides broad coverage and attention to each one. Article 157 thus states:

> "Article 157. Procedural formalities. The proceedings must be recorded in writing and in the Spanish language; if they are conducted in another language or if the person cannot express himself in Spanish, the appropriate translation shall be done or an interpreter used."

219. As to everyone's right to be informed of any charges against him, article 439 of the Code of Criminal Procedure (amended by article 58 of Act No. 81 of 1993) states that "The pre-trial proceedings shall conclude either with an indictment or the dismissal of charges". Article 59 of the same Act,

by which article 440 of the Code was amended, determines how the accused, if he is at liberty, must be personally informed of the judge's decision, using the most effective means, at his last known address during the trial. Articles 441 and 442 lay down the substantive and formal requirements for indictment. Article 441 states: "The prosecutor shall hand down an indictment if the occurrence of the act has been demonstrated and there is a confession or testimony offering serious grounds for credibility, conclusive evidence, documents, expert appraisals or any other means of proof that incriminates the accused". Under article 442:

> "Article 442. Formalities for indictment. An indictment is interlocutory in nature and must contain:
>
> 1. A brief account of the facts under investigation, with all the specific circumstances of means, time and place;
>
> 2. A description and assessment of the evidence relevant to the investigation;
>
> 3. The provisional judicial determination, indicating the chapter of the relevant title of the Criminal Code;
>
> 4. The reasons why the indictment does or does not agree with the parties' pleadings."

220. With regard to access to the documents and other testimony which the accused needs for his defence, article 321 of the Code of Criminal Procedure guarantees that, during the preliminary investigation, counsel for the defence has the right to know what steps have been taken and to be issued copies of the file. Article 331 of the Code of Criminal Procedure states that, during the investigatory stage, "anyone who takes part in the proceedings is entitled to be issued a copy of the records, for his exclusive use and in the exercise of his rights. The fact of being a party to the proceedings imposes an obligation to maintain the confidentiality of the proceedings, with no need for any particular measure". Article 1 of Decree-Law No. 99 of 1991 stipulates that, during the investigatory stage, the person being investigated and the defence counsel "shall have the right to review the trial, with the obligation of maintaining the confidentiality of their own actions".

221. The conditions for communication between the accused and his counsel are governed by articles 111 et seq. of Act No. 65 of 1993:

> "Article 111. Communications. Prison inmates shall have the right to maintain communications with the outside world. On admission to a detention centre, detainees shall have the right to indicate who should be informed of their arrest, to contact their lawyer and to have their family informed of their status.
>
> Communication between inmates and their lawyers may not be intercepted or recorded.

> Article 112. Visits. Permission to visit shall be granted to any lawyer who so requests, once he has shown his professional identity card and as long as the inmate agrees.
>
> Article 139. Validity and appropriateness of appointing a defence counsel. Anyone who has been involved with the law, whatever his legal status, may at any time appoint a defence counsel by filing a duly certified power of attorney with the competent authority and addressing it to the appropriate official.
>
> Article 140. Public defence services. The public defence service, headed and organized by the Ombudsman, shall be provided to anyone unable to pay for his own defence, at the request of the accused, the Government Procurator's Office or a law officer.
>
> Article 141. Court-appointed defence. When there is no public defender in the place where the proceedings are being conducted or it is impossible to appoint one immediately, counsel shall be appointed by the court.
>
> Article 148. Persons empowered to defend the accused. In accordance with Decree No. 196 of 1971, the role of defence counsel to take the accused's statement when there is no registered lawyer to assist him may be assigned to any honourable citizen, provided that he is not a public official."

222. In order to guarantee due process and avoid unreasonable delays in the procedural stage of the preliminary investigation, something that would also be contrary to the right to the presumption of innocence provided for in the Constitution, the Congress set a two-month time limit, in article 41 of Act No. 81 of 1993, for the conduct of the preliminary investigation "on expiration of which an order of prohibition shall be issued. Anyone aware that charges are being brought against him in a preliminary investigation shall be entitled to request and to ensure that he should be heard immediately and freely and to appoint a defence counsel to assist him in this and any other phase of the investigation". The preliminary investigation is thus reasonably short, to the benefit of the accused.

223. Under Colombian criminal law, the accused may not examine witnesses for the prosecution; however, in addition to the provisions of article 29 of the Constitution on requesting and challenging evidence, article 248 of the Code of Criminal Procedure lists the types of evidence that can guarantee his right of defence and to due process. According to that article, the accused may request the testimony of witnesses. The article states the following about types of evidence:

> "Article 248. The following are types of evidence: inspection, expert assessment, documents, testimony, confession. Circumstantial evidence shall be taken into account in assessing the evidence, in keeping with sound judgment. The official shall submit any evidence not referred to in this Code in accordance with the provisions governing similar evidence, or on the basis of his own good judgement, always respecting fundamental rights."

224. Article 7 of the Criminal Code reads:

> "Article 7. Adversarial procedure. During the proceedings, the principle of the adversarial procedure shall apply. During the preliminary investigation, the accused may present or challenge evidence."

225. In connection with article 14, paragraph 3 (f), of the Covenant, as referred to above, article 408 of the Code of Criminal Procedure provides that "Every accused person deprived of his liberty shall be entitled ... to an interpreter in his own language if he should need one when being informed in person of any decisions".

226. With regard to article 14, paragraph 3 (g), of the Covenant, article 283 of the Code of Criminal Procedure states that:

> "Article 283. Exception to the duty to testify. No one may be compelled to testify against himself or against his spouse or permanent partner or relatives to the fourth degree of consanguinity, the second degree of relationship by marriage or the first degree of civil relationship. This right shall be communicated by the official concerned to any accused person who is interrogated and any person who is to give evidence."

227. Article 282 of the Code of Criminal Procedure reads:

> "Duty to give evidence. Everyone has an obligation to give any evidence under oath that is requested of him in legal proceedings, except as otherwise provided by the constitution or the law. No oath shall be administered to witnesses under 12 years of age and, during the proceedings, such witnesses shall be assisted to the extent possible by their legal representative or by an adult relative who shall swear to maintain the confidentiality of the proceedings."

228. Regarding article 14, paragraph 4, of the Covenant, Title V of the Minors' Code governs all aspects of the trial, sentencing and enforcement of measures applicable to minors.

229. The minimum age for bringing charges against a minor is regulated by article 165 of the Minors' Code:

> "Article 165. For all purposes, minors under 18 years of age may not be criminally charged."

230. The maximum age at which a person is still considered to be a minor is defined in article 28 of the Minors' Code:

> "Article 28. The term 'minor' means anyone who has not reached the age of 18 years."

231. The trial of minors is governed by article 167 of the Minors' Code, as follows:

> "Article 167. Juvenile or family courts of sole instance shall try cases of criminal offences whose perpetrators or co-perpetrators are aged between 12 and 18 for the main purpose of ensuring their full training and their normal integration into the family and the community."

232. Article 169 reads:

> "Article 169. Without prejudice to the provisions of article 165, 'defensores de familia' shall try criminal offences whose perpetrators or co-perpetrators are under 12 years of age so as to offer them special protection, should their case so require, and to secure their overall education. They shall also try minor offences whose perpetrators or co-perpetrators are under 18 years of age."

233. Article 164 of the Minors' Code describes the procedural guarantees to which minors are entitled:

> "Article 164. In trials involving minors, as in all other trials, the procedural guarantees embodied in the Constitution and the laws shall be respected, particularly with regard to the presumption of innocence, the right of defence and the right to be informed of the reasons for one's arrest."

234. Article 203 of the Minors' Code also regulates the rights of minors in the implementation of its provisions:

> "Article 203. Minors shall be entitled:
>
> 1. To receive information on:
>
>   (a) Their rights, from the persons or officials to whose care they have been entrusted;
>
>   (b) Rehabilitation measures and the stages in the process of their return to their family setting;
>
>   (c) The internal rules and regulations of the institutions in which they are being held, particularly with regard to punishable conduct and disciplinary measures that might be applied to them;
>
> 2. To be kept in their family setting, if at all possible, and, only when that is inappropriate or the personality of the minor concerned makes it advisable, to be placed in an institution, which must be carried out under the conditions most appropriate to their overall education;

3. To receive health, social and educational services appropriate to their age and circumstances from staff with the requisite professional training;

4. To communicate in private with the Defensor de Familia, their lawyer, the juvenile judge or the family judge;

5. To communicate freely with their parents or guardians, unless they are expressly prohibited from doing so by the judge on the grounds of their best interests;

6. To be segregated from adult offenders during all stages of the proceedings and while serving sentences;

7. To have their family informed of their status and of the rights covered by this article."

235. As to the social rehabilitation of juvenile offenders, article 209 of the Minors' Code provides the following:

> "Article 209. A minor must be placed in a closed institution under the following circumstances:
>
> 1. For a criminal offence involving serious threats or violence;
>
> 2. For the repeated commission of criminal offences;
>
> 3. For unjustified failure to comply with a previously imposed measure.
>
> Paragraph. The State shall set up closed institutions in which rehabilitation programmes must be provided for juvenile offenders, so that their placement meets age, psychological maturity and other criteria that guarantee the effectiveness of the remedial and rehabilitation measures adopted."

236. With regard to article 14, paragraph 5, of the Covenant on review by a higher tribunal, the Code of Criminal Procedure provides for the following remedies:

> "Article 195. Ordinary remedies. The remedies of reconsideration, appeal and review of leave to appeal, which shall be applied for in writing, may be filed against decisions handed down during criminal proceedings, except as otherwise provided."

237. In accordance with the preceding provision, not only can final judgements or decisions by courts of first instance be appealed in Colombia, but such remedies may be applied for against decisions by courts which affect the fundamental rights of the parties to the proceedings.

238. The special remedy of judicial review of final judgements may also be filed once all other remedies have been exhausted.

> "Article 218. Special remedy of judicial review (amended by art. 35 of Act No. 81 of 1993). Legal basis. The special remedy of judicial review may be filed against sentences handed down in second instance by higher district courts and the military criminal court for offences punishable by deprivation of liberty for six years or more, even if the penalty was imposed as a security measure. The remedy also applies to related offences, even if the corresponding penalty is lighter than that referred to above.
>
> Article 219. Purposes of the review. The main purposes of the special remedy of judicial review are to give effect to material law and the guarantees owed to persons taking part in the criminal proceedings; to provide compensation for loss or injury to the parties caused by the sentence under appeal; and to unify national case law."

239. Article 242 of the Code of Criminal Procedure embodies the guarantees protected by article 14, paragraph 6, of the Covenant, as follows:

> "Article 242. Consequences of the decision to exempt from responsibility. If the decision handed down is to discontinue the proceedings or to acquit the accused or his heirs may demand restitution of the amount paid, without prejudice to any other actions arising out of the unjust act. There are grounds for invoking the responsibility of the State."

240. In order to protect the individual from consecutive criminal proceedings being instituted against him for the same punishable act, even under a different legal name, if, as established in article 14, paragraph 7, of the Covenant, such action would threaten his personal freedom and security, Colombian legislation prescribes the following in article 9 of the Criminal Code on res judicata:

> "Article 9. A person who has been convicted or acquitted under an enforceable judgement handed down by a Colombian court shall not be liable to be tried again for the same offence, even if the offence is given another name."

241. Article 15 of the Code of Criminal Procedure uses similar wording:

> "Article 15. Res judicata. Anyone whose personal situation has been defined by an enforceable judgement or by a decision with similarly binding force may not be tried again for the same offence, even if the offence is given another name. Colombians who have committed offences abroad which constitute offences under domestic legislation shall be tried and sentenced in Colombia, by virtue of article 15 of the Criminal Code."

Article 15

242. Principles of legality, non-retroactivity and benefit of criminal law. The right to due process and the principle of the non-retroactivity of criminal law are protected under article 29 of the Constitution, which states the following:

> "Article 29. Due process shall apply in all legal and administrative proceedings. No one may be tried except in conformity with the relevant laws that predate the act of which the person is accused."

243. This article also embodies the principle that in criminal matters, permissive or favourable laws, even if they postdate the act, will be applied in preference to restrictive or unfavourable laws.

244. The foregoing principles are developed in article 1 of the Code of Criminal Procedure, as follows:

> "Article 1. Due process. No one may be tried except in conformity with the relevant laws that predate the act of which he is accused."

245. The pre-existing nature of criminal law in general and of criminal procedural law in particular is thus a part of due process; this means that procedural rules may not be used in a trial ex post facto and substantive criminal law must therefore predate the act of which the person is accused.

246. In order for an act to be considered an offence in Colombia, it is not enough for it to be classified as such or described in a legal rule. It must also be unlawful and culpable. An act is unlawful when, in addition to being described in a rule, it injures or threatens to injure the general or particular interest protected by the State's legal order. There is no offence without an actual or potential offence against a penally protected interest; there is no punishable act unless property protected by the State's legal order is damaged or endangered. Furthermore, in order for an act that has been classified as unlawful to be punishable, it must be perpetrated with culpability, that is, with the conscious will of an agent or perpetrator who was able to and under an obligation to behave otherwise.

247. With the principles of characterization, unlawfulness and culpability provided for in articles 3, 4 and 5 of the Colombian Criminal Code, residents of the national territory enjoy full guarantees of security. Under article 6 of the Code:

> "Article 6. Permissive or favourable laws, even if they postdate the act, shall be applied in preference to restrictive or unfavourable laws. This principle also applies to those who have been convicted."

248. In conformity with the foregoing principle, if a new law abolishes a pre-existing offence, the acts punishable under the previous law are considered not to have occurred and will therefore not be punished. In this case, anyone sentenced for the abolished offence will be released. If the new law introduces changes but the act is still classified as an offence, the lighter penalty will be applied.

249. The penalties applicable to offences are governed entirely by Title IV of the Criminal Code. Penalties have a retributive, preventive, protective and resocializing function in Colombia, just as security measures are aimed at treatment, protection and rehabilitation. The retributive function consists of restoring the legal order of society and reaffirming the power and authority of the State. The preventive function is both collective and

individual, since it is a warning addressed to the community to refrain from committing offences and also prevents the individual from causing injury. The protective function is designed to reform the criminal through education and work. The purpose of the resocializing function is to combat the individual causes of criminality so that the criminal can readapt to life in society.

Article 16

250. Recognition of the legal personality of human beings. Article 14 of the Constitution embodies the recognition of the legal personality to which citizens are entitled, as follows:

> "Article 14. Every person is entitled to recognition of his legal personality."

251. Article 73 of the Civil Code classifies persons as "natural or legal"; article 74 defines the former as "individuals of the human species, of whatever age, sex, origin or condition". It should be noted that the Civil Code first entered into force in 1886, based on the Chilean Civil Code drafted by the jurist Andrés Bello.

252. The principle of the existence of persons is embodied in articles 90, 91, 92 and 93 of the Civil Code, which read:

> "Article 90. The legal existence of every person begins with birth, that is, upon complete separation from his mother. Foetuses that die in their mother's womb, perish before being completely separated from their mother or do not survive separation for even one minute shall be considered never to have existed.
>
> Article 91. The law protects the life of the unborn. Consequently, at the request of any person or *ex officio*, the judge shall take those decisions he deems appropriate to protect the existence of the unborn, as long as he believes it to be somehow in danger.
>
> Article 92. The moment of conception is inferred from the time of birth, according to the following rule:
>
> It shall be presumed by right that conception precedes birth by not less than 180, and not more than 300, entire days, counting back from midnight on the day when the birth began.
>
> Article 93. The rights that would be extended to the unborn child, should it be born and live, shall be suspended until the birth takes place. And if birth constitutes the beginning of existence, the newborn in fact shall begin to enjoy such rights as if he had existed at the moment when they were defined.
>
> In the case covered by article 90, these rights shall pass to other persons as if the unborn child had not existed."

253. A legal person is defined by article 663 of the Civil Code as "a fictitious person, capable of exercising rights, undertaking civic duties and being represented legally and extrajudicially".

Article 17

254. Right to privacy, protection of private correspondence, inviolability of the home and the protection of honour. The dignity of the person and the human being in his social dimension represent the reason for and the purpose of the Constitution adopted by the Constituent Assembly of 1991. Under article 2 of that text, the authorities of the Republic are established in order to protect all persons residing in Colombia as to their life, honour, property, beliefs and other rights and freedoms. To that end, the Assembly promulgated laws aimed at protecting personal privacy in both the public and private spheres.

255. Article 15 of the Constitution protects the rights of the person to personal and family privacy, a good name, habeas data and the inviolability of correspondence and other forms of private communication:

> "Article 15. All persons are entitled to their personal and family privacy and to their good name and the State shall respect them and ensure they are respected. They are also entitled to know of, update and rectify any information about them contained in data banks and in the records of public and private entities.
>
> Freedom and other guarantees enshrined in the Constitution shall be respected in the collection, processing and transfer of data.
>
> Correspondence and other forms of private communication are inviolable. They may be intercepted or recorded only pursuant to a court order, in those cases and complying with the formalities required by law.
>
> For tax or legal purposes and for cases of inspection, supervision and intervention, the State may require the submission of accounting ledgers and other private documents, under the conditions specified by law."

256. Article 21 of the Constitution guarantees the right to honour and a good reputation as a value extrinsic to the human being:

> "Article 21. The right to honour is guaranteed. The law shall indicate the form of protection."

This is a fundamental right with immediate effect and, consequently, no other law is required to give effect to it, in accordance with article 85 of the Constitution.

257. Lastly, article 28 of the Constitution proclaims, among other rights, the inviolability of the person, the family and the home:

> "Article 28. All persons are free. No one may be subjected to interference with his person or his family, to arrest, detention or imprisonment or to having his home searched, except in

> accordance with a written order from the competent legal authority, in due form and for reasons previously defined by law."

258. The right to honour and a good name, the essence of which is the protection of the right of all persons to self-respect and the respect of others, is, like the other fundamental rights, safeguarded by the remedy of protection, as well as by criminal law through the classification of offences against moral integrity (insult and calumny) contained in Title XII, single chapter, of the Criminal Code (Decree-Law No. 100 of 1980). Anyone who makes ignominious accusations that damage another's reputation or good name within the community commits an insult. Anyone who falsely accuses another of committing an offence or misdemeanour is guilty of calumny.

259. From 1992 to 1994, the Constitutional Court, acting in its capacity as a court for the review of judicial decisions relating to the remedy of protection of constitutional rights, considered and issued opinions on 20 cases involving the right to honour, 28 on the right to a good name and 45 on the right to privacy. Pursuant to article 93 of the Constitution, which gives international human rights instruments precedence over domestic law, the Constitutional Court referred to article 17 of the Covenant and article 11 of the American Convention on Human Rights in concluding that "honour is an essential and inherent attribute of the person, deriving from his condition and dignity" (Constitutional Court, dec. 412T of June 1992).

260. In relation to the right to the inviolability of the home, the essence of which is to guarantee that private homes will not be subjected to arbitrary or clandestine intrusions, articles 343 to 346 of the Code of Criminal Procedure (Decree No. 2700 of 1991), specify searches as the legal means by which the authorities, as long as they possess a search warrant from the competent judicial officer, may enter legally protected premises (such as homes) against the wishes of their occupants in order to produce specific results, such as to conduct an arrest, search or seizure or to obtain evidence. Nevertheless, for cases of flagrante delicto, when the offence is being committed on premises not open to the public, Judicial Police Officers may enter without a warrant from the prosecutor in order to prevent the act from continuing to be committed.

261. As a measure for the guarantee and protection of the fundamental rights of persons subjected to search and seizure, the law requires the prosecutor to be present during the proceedings; he also has the legal duty to file a statement identifying and describing all the items that have been examined or seized and the premises on which they were found and to produce any records requested by the persons taking part in the proceedings.

262. As an administrative measure, the Office of the Public Prosecutor issued circular No. 0005 of 16 June 1995 and addressed it to the directors of all Public Prosecutor's Offices and Sub-Offices in order to unify criteria and set up a monitoring system to ensure strict compliance with the law in the execution of searches and seizures. A copy of this circular is annexed for the Committee's information.

263. If the search is not conducted in accordance with the legal requirements, the officers conducting it are guilty of disciplinary offences,

the investigation of which is to be carried out by the internal oversight bodies of institutions with judicial police functions, without prejudice to the priority jurisdiction of the Public Prosecutor's Department. Any public servant who, in an abuse of his power, enters another's home is guilty of an abuse of authority, by virtue of article 1, paragraph 4, of Act No. 23 of 1991. Any individual who arbitrarily, deceitfully or clandestinely enters another's home is likewise guilty of a misdemeanour.

264. Another basic right legally protected by the State through the criminal justice system is the right to privacy, to which effect is given in the inviolability of private communications. Title X, Chapter V, of the Criminal Code, which lists offences against individual freedoms and other guarantees, relates to violations of secrets and communications and defines as a punishable act the conduct of anyone who unlawfully takes, hides, mislays, destroys, intercepts, monitors or impedes someone else's private communication or unduly learns of its contents; the penalty is increased if the perpetrator discloses the contents of the communication or uses them to his own or another's advantage at someone else's expense.

265. It is therefore clear that the exercise of the rights which come within the private sphere of the citizen and are fully recognized in both the constitutional and legal systems of Colombian domestic law can rely on speedy and effective machinery for immediate protection and that citizens enjoy protection of their basic rights, and as the essence of protected legal entitlements, as a result of the authority of the State.

Article 18

266. Freedom of thought, conscience and religion. In articles 18 (freedom of conscience) and 19 (freedom of worship) of its chapter on fundamental rights, the 1991 Constitution devotes special attention to the rights enshrined in article 18 of the Covenant. None the less, the Colombian constitutional regime departs somewhat from that of the Covenant, as is apparent from the following provisions:

> "Article 18. Freedom of conscience is guaranteed. Everyone shall have the right to hold convictions or beliefs without interference. No one shall be compelled to reveal them or be obliged to act against his or her conscience.
>
> Article 19. Freedom of worship is guaranteed. Every individual has the right freely to profess his or her religion and to propagate it individually or collectively.
>
> All religions and churches are equally free before the law."

267. Colombian constitutional doctrine makes a clear distinction between freedom of conscience or ideology (art. 18) and freedom of religion or worship (art. 19). In Colombia freedom of worship is regulated by Act No. 133 of 23 May 1944 known as the Statutory Act on Freedom of Religion (annex 37), whose constitutionality was, on account of its statutory nature, examined by the Constitutional Court before its adoption and promulgation. In decision C-088 of 3 March 1994 (annex 38) the Constitutional Court declared

most of the Bill enforceable with the exception of certain parts of articles 9, 13, 14 and 15, as detailed in the relevant decision.

268. In Colombia the right to have or not to have a religion is a fundamental and absolute right which may be neither suspended nor restricted, even under a state of emergency, since it is one of those fundamental rights which, in accordance with article 214, paragraph 2, of the Constitution, may not be suspended under a state of emergency and which, in accordance with article 85 of the Constitution, is directly enforceable. Article 4 of Statutory Act No. 137 on States of Emergency of 1994 declares freedom of conscience and religion to be inviolable.

269. In accordance with the above-mentioned decision C-088 of the Constitutional Court, "it (the Statutory Act on Freedom of Religion) does not concern legal regulation of freedom to believe or not to believe in a formulation, assertion, institution, creed, denomination, proposal, faith, practice, rite, religion or form of worship, or the form or intensity and extent of the belief, but their respectable and institutionalized observance. Clearly, freedom individually to propagate one's religion under the terms of article 19 of the Constitution is but one element deriving therefrom ... The Statutory Act concerns not only the question of belief ... but also that of the organized existence of churches and religious faiths as legal persons, with normative , fiscal, civil, subjective, personal, credit and real effects and effects for pubic law and cooperation, and the relationship of individuals with such institutions as regards specific manifestations of freedom."

270. Article 1 of the Statutory Act on Freedom of Religion establishes the State's duty to guarantee freedom of religion in the following terms:

> "Article 1. The State guarantees the fundamental right to freedom of religion and worship, as recognized in article 19 of the Constitution.
>
> This right shall be interpreted in conformity with the international human rights treaties ratified by the Republic."

271. The legislature thus emphasized the need to apply, by means of the law, the criteria developed by international human rights law for purposes of interpretation.

272. In Colombia, the main religion is Roman Catholicism, and until a few years ago other religions were seen as marginal. Until the 1991 Constitution came into force, Colombia had an established religion. This is no longer the case as article 19 of the current Constitution declares all religious faiths and churches to be equally free before the law. Accordingly, there is now no established religion in Colombia, as its Constitution does not give precedence, superiority or primacy to any religion. The Statutory Act on Freedom of Religion defines the non-religious character of the State in the following terms:

> "Article 2. There shall be no official or State church or faith. However, the State is not atheistic, agnostic or indifferent to the religious feelings of Colombians."

273. It is accordingly a duty of the State to protect all people residing in Colombia - by virtue of a broad interpretation of the term "Colombians", as adopted by the Constitutional Court when examining this article of the Statutory Act, as regards the exercise of their freedom to profess a religion, including cooperation with churches and faiths to achieve common ends.

274. As to the religious faiths which exist in Colombia, the predominance of the Roman Catholic Church has already been mentioned. There are also various Protestant churches such as the Evangelical, Presbyterian, Baptist, Adventist, Mormon, Mennonite and other churches. Then there are Anglican and Eastern Orthodox groups, and very important Jewish groups with synagogues in a number of Colombian towns. In recent years Muslim groups have been established by immigrants from the Middle East. They have places of prayer, although they have not yet built any mosques. These churches and faiths are gradually acquiring legal recognition and calling for State protection, on the basis of provisions of the 1991 Constitution and the Statutory Act on Freedom of Religion. It should be noted that members of the Evangelical groups have been elected to Congress, where they act as representatives of those groups. There are no official statistics showing membership of the various churches in Colombia.

275. As regards State protection for freedom of religion and worship, it should be noted that individual violations of the right to exercise religious freedom are treated as special offences punishable by senior police officers - criminal or national police inspectors. Under the provisions of Act No. 23 of 1991, which introduced a number of measures to reduce the judicial backlog, violation of freedom of worship and preventing or disrupting a religious ceremony are punishable by 6 to 12 months' imprisonment.

276. As regards the limits to the exercise of freedom of religion and worship, it should be stressed that article 4 of the Statutory Act contains a clear reference to article 29 of the Universal Declaration of Human Rights, in that it stipulates that the sole limit to the exercise of this freedom is the need to protect the right of others to exercise their public freedoms and fundamental rights and to safeguard public security, health and morals, which are essential elements of public order as protected by law in a democratic society. In decision C-088 of 3 March 1994, the Constitutional Court ruled that article 4 of the Act is enforceable under the terms set out in the preambular part of its decision. In the same part of the decision the Constitutional Court interpreted, in a manner binding on the State and all public servants, the meaning and scope of the limitations on the exercise of freedom of religion and worship on the basis of the provisions of international human rights law and international doctrine.

277. It should be stressed that the Statutory Act on Freedom of Religion contains provisions and measures that specifically concern the following points:

(a) The juridical autonomy and immunity from coercion of individuals as regards the right:

(i) To profess freely chosen beliefs or not to profess such beliefs;

(ii) To change one's religion or to abandon it;

(iii) Freely to express one's religion or religious beliefs or lack of them or to refrain from declaring them;

(iv) To pray and worship, individually or collectively, in private or in public;

(v) To celebrate festivals;

(vi) Not to be disturbed when exercising these rights;

(vii) To a decent burial in conformity with the precepts and rites of the deceased's religion, as specifically regulated in the same article;

(viii) To enter into and solemnize marriage and to found a family in conformity with one's own religion;

(ix) Not to be compelled to practise acts of worship or to receive religious ministrations contrary to one's personal convictions;

(x) To receive religious ministrations of one's own faith, particularly in military barracks, public health care establishments and places of detention;

(xi) To receive religious instruction and to provide such instruction to anyone who wishes to receive it, and the right to refuse it;

(xii) To choose the religious education of families;

(xiii) Not to be prevented on religious grounds from acceding to or exercising any civil office or activity, or from exercising public offices or functions;

(xiv) To meet or engage in a public demonstration for religious purposes;

(b) Churches and religious faiths have the following rights:

(i) To establish places of worship and assembly, and the right to respect for their religious purpose and specific character;

(ii) Freely to exercise their ministry, to ordain ministers and to assign their pastoral responsibilities;

(iii) To communicate and maintain relations with their members and with other Churches in Colombia or abroad;

(iv) To establish their own hierarchy and to appoint their own freely elected ministers;

(v) To establish and independently manage their own training institutions;

(vi) To freely write, publish, receive and use their own books and other publications on religious matters;

(vii) To announce, communicate and propagate their own creed, orally or in writing;

(viii) To perform educational, charitable and welfare activities.

278. Article 6 of the Statutory Act on Freedom of Religion establishes guarantees to allow churches to provide religious assistance to their members when they are in public educational or military establishments, hospitals, welfare establishments, and prisons or other government premises. Lastly, the Statutory Act regulates recognition of the legal personality of churches and religious faiths, vests the relevant administrative responsibility in the Ministry of the Interior, lays down the relevant procedural requirements and those for entry in the appropriate public register, and regulates the autonomy of churches and religious faiths.

Article 19

279. Freedoms of opinion and expression, and duties and responsibilities in exercising these freedoms. In reviewing article 18 of the Covenant, it was pointed out that Colombian constitutional doctrine considers freedom of conscience also to include freedom to hold one's own opinions and to express views on the various ideologies. Article 18 of the Constitution guarantees this freedom in the following terms:

> "Article 18. Freedom of conscience is guaranteed. Everyone shall have the right to hold convictions or beliefs without interference. No one shall be compelled to reveal them or be obliged to act against his or her conscience."

Thus the article guarantees that everyone has the right to hold opinions without interference, as prescribed by article 19, paragraph 1, of the Covenant. Under the Colombian constitutional regime, freedom of opinion or conscience is an absolute right which admits of no restriction, in accordance with article 85 of the Constitution, which classifies it as a directly enforceable right. Nor may it be restricted during states of emergency, as specified in article 4 of Statutory Act No. 137/94 on States of Emergency of 1994.

280. Freedom of expression is specifically established in article 20 of the Constitution in the following terms:

> "Article 20. Every individual is guaranteed the freedom to express and propagate his or her thoughts and opinions, to transmit and receive true and impartial information, and to establish mass media.

> The mass media are free and have a social responsibility. The right of correction, under equitable conditions, is guaranteed. There shall be no censorship."

281. In addition, article 73 of the Constitution provides as follows:

> "Article 73. Journalism shall enjoy protection in order to guarantee its freedom and professional independence."

282. As well as establishing the "freedoms of education, learning and research and academic freedom" (art. 27), and guaranteeing the autonomy of universities (art. 69), the Constitution establishes, in article 71, that the search for knowledge and artistic expression are free and are to be encouraged and stimulated by the State.

283. The Constitution thus establishes that the freedoms of expression and information constitute fundamental rights, whose exercise enjoys legal protection but also entails obligations and responsibilities. Their exercise is accordingly a right and a duty, i.e. a right with a concomitant responsibility which influences its realization. For the user or receiver of information, full realization of his fundamental constitutional right is guaranteed, provided the information meets three requirements: it must be accurate, objective and timely. During states of emergency the State may impose restrictions on the mass media, in conformity with articles 27 and 38 (c) of Act No. 137 of 1994.

284. The term "mass media" covers a concept that lies between two rights. For their owner, the media are an expression of free enterprise, and ultimately of private property, but in both respects the Constitution stipulates that they involve a right that serves social functions in the public interest. For others, the media are a means of realizing their right to freedom of expression and to true and impartial information.

285. Freedom of information is included in the Constitution's chapter on fundamental rights. The final precept of that chapter is both prescriptive and universal: "There shall be no censorship".

286. Regardless of, and without prejudice to, other forms of responsibility - civil or criminal - deriving from the abuse of freedom of information, the social responsibility of the media may be enforced by exercising the right to correction and, should the branch of the media concerned refuse to correct an item of information that infringes the rights of an individual or group, the latter may apply for the protection of fundamental rights in order to secure the correction. The Constitution establishes the right to correction on equal terms. According to the Constitutional Court's case law, "equity imposes on the obligation to correct a number of conditions whose purpose is fully, effectively and rapidly to rectify the effect of the information published. Failure to publish a timely correction or to observe due equity in presentation, timing and accuracy may render it ineffective".

287. The nature of the branch of the media concerned is not irrelevant to the exercise of the rights to freedom of expression, opinion and information.

Whereas in some cases financial means is sufficient in order to publish one's thoughts or opinions, i.e. in the press, in others it is necessary to use public facilities in order to exercise the rights inherent in this activity. This is an important distinction in terms of recognition of the directly enforceable nature of freedom to establish mass media, as the media that use the electromagnetic spectrum are given special juridical treatment.

288. It should be noted that, where the media that use radio-frequency broadcasting are concerned, i.e. radio and television, the freedom to establish mass media referred to in article 20 of the Constitution cannot be interpreted independently of the relevant provisions of article 75 of the Constitution, which states: "The electromagnetic spectrum is an inalienable and imprescriptible public asset subject to the management and control of the State. Equality of opportunity is guaranteed in access to its use in the conditions determined by law." Nor can it be disassociated from article 76, which establishes, with regard to television services, that State intervention in the electromagnetic spectrum used for this purpose "shall be under the control of a public agency with legal personality, administrative and technical autonomy and ownership rights and subject to its own legal regime. This agency shall develop and execute the State's plans and programmes in furtherance of the television policy determined by law".

289. Where article 20 of the Constitution is concerned, reference should be made to the following decision by the Constitutional Court, which served as the basis for the Television Act: "The exercise of the fundamental rights to inform and to establish mass media using the electromagnetic spectrum is not unrestricted. On the contrary, it requires State intervention on account of the electromagnetic spectrum's status as a public asset and in order to preserve and develop the social objectives inherent in television services" (Constitutional Court, decision T-081/93).

290. Legal regulation of telecommunication services and activities. Decree-Law No. 1900 of 1990, which amended the standards and statutes regulating telecommunication activities and services, is in harmony with the constitutional provisions even though it was issued prior to the 1991 Constitution.

291. Decree-Law No. 1900 stipulates that telecommunications are a public service under the responsibility of the State, which shall provide it directly through national or regional public agencies or indirectly through franchises, in accordance with the established provisions; it determines that the Government, through the Ministry of Communications, shall be responsible for planning, regulating and supervising telecommunications; it guarantees pluralism in broadcasting information and presenting opinions as a fundamental right of the individual, from which freedom of access to telecommunication services derives; it stipulates that the Government shall foster nationwide coverage by the telecommunication services and their modernization and shall promote access to them by the low-income sectors of the population, residents in urban and rural areas, marginal or frontier areas, ethnic groups and, in general, the weakest or minority sectors of society in order to further their social and economic development, the expression of their culture and their integration into national society.

292. Decree-Law No. 1900 also guarantees the right of correction for any individual or group that believes it has been affected by inaccurate information transmitted via the telecommunication services, without prejudice to any appropriate civil, criminal or administrative proceedings. The correction, when appropriate, must be made equitably; this means that whoever broadcast the information must correct or modify what was said, again publicly and with equal prominence, in order to make good the violation of the right. If a dispute arises as to whether or not the conditions of equity required by the Constitution were observed when making the correction, the courts are responsible for assessing the case and reaching the appropriate decision.

293. These provisions are in keeping with those of criminal law, which determines further criminal liability for the perpetration of punishable acts when providing information; examples are the offences of libel and slander, for which penalties are laid down in articles 313 and 314 of the Colombian Criminal Code.

294. The same Decree-Law establishes that the electromagnetic spectrum is the exclusive property of the State and that, as such, it constitutes an inalienable and imprescriptible public asset, whose management, administration and supervision are the responsibility of the Ministry of Communications, in conformity with the laws in force.

Article 20

295. Prohibition of propaganda for war and of advocacy of national, racial or religious hatred. As regards article 20 of the Covenant, it must be acknowledged that current Colombian criminal law does not classify propaganda for war and advocacy of national, racial or religious hatred as either odinary or minor offences. The legislature will have to fill this gap by adopting an act to supplement the ordinary and military Criminal Codes.

296. By analogy, it might be argued that such a prohibition is in fact implicit in article 22 of the Constitution, which provides that "peace is a right and a mandatory duty". This interpretation may also be derived by analogy from article 95 of the Constitution, paragraph 6 of which stipulates that "to strive towards the achievement and maintenance of peace" is a duty of the individual and the citizen.

297. Colombian legislation prohibits civil organizations, and hence political organizations, from carrying out activities or propagating thoughts or opinions that violate human rights. In particular, with regard to the organization and functioning of political parties and movements, Act No. 130 of 1994 stipulates that they "may organize freely. However, in carrying out their activities they are required to obey the Constitution and laws, to defend and disseminate human rights as a cornerstone of peaceful coexistence, and to strive to achieve and maintain peace, in accordance with article 95 of the Constitution". This provision is explicit as regards the obligation of these associations of citizens to comply, in pursuing their aims, with the constitutional and legal principles which prohibit discrimination against persons on grounds of race, sex, nationality and opinion and which establish Colombia as a pluralistic State that respects ethnic and cultural diversity.

298. As was explained in connection with article 19 of the Covenant, the media have a social responsibility, i.e. they are required to promote social integration and development within the framework of the pluralistic values safeguarded by the Constitution. Article 3 of Decree No. 1900, amending the provisions and statutes governing telecommunications and related activities and services, provides as follows:

> "Telecommunications shall be used as an instrument to promote Colombia's political, economic and social development, with the aim of raising the standard and quality of life of its inhabitants.
>
> Telecommunications shall be used responsibly to help defend democracy, to promote participation by Colombians in national life, and to safeguard human dignity and other fundamental rights enshrined in the Constitution and thereby ensure peaceful coexistence."

299. Article 4 of Decree No. 1480 of 13 July 1994, regulating radio broadcasting, in its turn states that "The purpose of the Radio Broadcasting Service is to promote the country's political, economic and social development and thereby raise the standard and quality of life of its inhabitants, to disseminate and enhance culture and information, and to affirm the essential values of the Colombian nation. Accordingly, all franchise-holders shall be required to adapt their programmes to these ends by broadcasting the truth, striving to preserve the mental and physical health of the public, and honouring national traditions, social cohesion, national peace and international cooperation".

300. In this way, albeit indirectly, incompletely and imperfectly as yet, the Colombian legal system reflects the mandatory prohibition required by article 20 of the Covenant.

Article 21

301. Right of peaceful assembly. The right of assembly is guaranteed by article 37 of the Constitution, which provides:

> "Article 37. Any group of individuals may gather and demonstrate publicly and peacefully. The law alone may expressly establish the cases in which the exercise of this right may be limited."

Clearly, in addition to the right of assembly, the Constitution also establishes the right to demonstrate publicly, provided it is exercised peacefully. The right to demonstrate publicly is thus political in character. It should be noted that no law or regulation prohibits assembly on private premises, and that the existing regulations, which are explained below, refer to assemblies and demonstrations in public places and thoroughfares.

302. Although the right of assembly and the right to demonstrate are covered in the chapter on fundamental rights, some authors take the view that they could be restricted under states of emergency. Nevertheless, Statutory Act No. 137 on States of Emergency of 1994 sets no particular restrictions on this right.

303. Decree No. 1355 of 1970, which introduced the National Police Code, contains the regulatory framework relating to right of assembly. Article 102 of the Code states:

> "Article 102. Any person may meet with others or parade in a public place for the purpose of expressing common interests and ideas of a political, economic, religious or social nature or for any other lawful purpose.
>
> For these purposes notice shall be given in person and in writing to the local administrative authorities. The communication shall be signed by at least three persons.
>
> The notice shall specify the date, time and place of the proposed meeting and be submitted two days in advance. In the case of parades, the planned route shall be specified."

304. Neither the Police Code nor any other enactment establishes cases in which the holding of a peaceful assembly is prohibited. Articles 104 and 105 of the Police Code stipulate as follows:

> "Article 104. Any public assembly or parade that degenerates into a riot or causes a breach of the peace or public safety shall be dispersed.
>
> Article 105. The police may prevent the holding of public meetings and parades of which due notice has not been given. They may also take this measure if the meeting or parade fails to conform with the objectives specified in the notice."

Article 22

305. Freedom of association and, in particular the freedom to form and join trade unions. The 1991 Constitution establishes freedom of association in general in article 38:

> "Article 38. The right of free association for the promotion of the various activities that individuals pursue in society is guaranteed."

Thus, natural and legal persons are guaranteed the right to associate for profit-making and non-profit-making purposes. The Civil Code - most of which came into force during the nineteenth century - regulates the establishment of companies, associations and societies for profit-making and non-profit-making purposes. Profit-making companies are established by private acts that are recorded in public documents drawn up before notaries, who keep them in public archives. Non-profit-making, charitable or welfare associations or societies may be established by private acts, but, citizens are required by law to register them with the chambers of Commerce, which are private-law entities that perform a public-service function. Such associations include trade unions and second and third-level trade union associations whose legal capacity is automatically recognized when they are formed, but whose establishment must be registered with the labour authorities. The Commercial Code governs the establishment of profit-making commercial companies, which may be formed through private acts that are subject solely to registration with the Chambers of Commerce.

306. The establishment and formation of trade unions and trade union associations are regulated on the basis of article 39 of the Constitution:

> "Article 39. Workers and employers have the right to form trade unions or associations without intervention by the State. They shall acquire legal recognition through the simple registration of their constituent instrument.
>
> The internal structure and functioning of the trade unions and social and guild organizations shall be subject to the legal order and democratic principles. The annulment or suspension of legal capacity may only be effected through judicial means. Trade union representatives shall be recognized as having the privileges and other guarantees necessary for the performance of their functions. Members of the police and armed forces shall not have the right to form and join trade unions."

307. The right to form and join trade unions is regulated by articles 353 et seq of the Substantive Labour Code, which apply to both employees and employers: the sole restriction on this right applies to members of the police and the armed forces, i.e. the National Police and the army, navy and air force.

308. Exercise of the right to form trade unions is unrestricted and requires no prior authorization by the State. In addition, it is guaranteed by both the Labour Code and the Criminal Code. The former provides that anyone who violates this right shall be punishable by a fine of 5 to 100 times the amount of the highest monthly minimum wage in force, which is determined by the Ministry of Labour and Social Security; the latter provides that "Any person who prevents or disrupts a lawful assembly or the exercise of the rights conferred by labour legislation or who takes reprisals in connection with lawful strike, assembly or association shall be liable to one to five years' imprisonment and a fine of 1,000 to 50,000 pesos".

309. According to figures on union membership, at the end of 1994 approximately 940,000 workers belonged to 2,922 trade unions registered with the Ministry of Labour and Social Security.

310. The trade union sector is considered to be one of the pillars of Colombian democracy; this is illustrated by the fact that the trade unions were called upon to participate in the Social Pact on Productivity, Prices and Wages concluded by the Government, employers and trade unions on 9 December 1994. In addition, the Social Pact led to the formation of the Tripartite Consultative Committee for the Development of the Trade Union Movement, which met during the first five months of this year. Its statements and agreements are contained in the document signed on 23 May 1995, a copy of

which is annexed. As its name suggests, the aim of the Commission is to strengthen trade union organizations, and to this end a series of actions and programmes will be initiated in order to promote a new culture of cooperation in labour relations.

Article 23

311. Protection of the family; freedom to marry; equality of rights of spouses; and protection for the children of marriages that have been dissolved. Article 42 of the Colombian Constitution lays down in some detail the basic provisions relating to the family, its protection and the rules governing marriage and divorce.

> "Article 42. The family is the fundamental unit of society. It is formed through natural or legal ties, by the free decision of a man and woman to enter into marriage, or by their responsible desire to form a family.
>
> The State and society shall guarantee comprehensive protection for the family. The law may determine the inalienable and non-seizable nature of family assets.
>
> The family's honour, dignity and privacy are inviolable. Family relations are based on equality of rights and duties of the couple and on mutual respect among family members. Any form of violence in the family is considered destructive of its harmony and unity and shall be punished in accordance with the law.
>
> Children born within or outside wedlock, adopted or conceived naturally or with scientific assistance have equal rights and duties. The law shall establish regulations concerning parental responsibility.
>
> The couple have the right freely and responsibly to decide the number of their children and shall be required to support them and bring them up while they are under age or disabled.
>
> The forms of marriage, the age and capacity to enter into marriage, the rights and duties of the spouses, their separation and dissolution of marriage are governed by civil law.
>
> Religious marriages shall have civil effects in the conditions established by law.
>
> The civil effects of any marriage shall cease through divorce in accordance with civil law.
>
> Decrees of annulment of religious marriages issued by the authorities of the faith in question shall also have civil effects, in the conditions established by law.
>
> The law shall determine matters relating to the civil status of persons and the consequent rights and duties."

312. In Colombia, the family constitutes a complex and diverse reality which, under a single name, covers a multitude of arrangements ranging from that in which an adult (father, mother or foster parent) takes responsibility for bringing up children to organization in clans (common among the indigenous population), and encompassing many other forms. The diversity of family types, in terms of structure, composition and organization, derives from historical, demographic, economic, political, social, cultural and educational factors.

313. In Colombia the family is a social institution whose social importance the State acknowledges by regulating its various aspects. Regulations relating to the provisions of article 42 of the Constitution were established by Act No. 25 of 1992, which reformed the Civil Code with regard to the civil effects of religious marriages and of divorces resulting from such marriages.

314. Consent constitutes the fundamental requirement for a marriage to be valid and to exist. Consent means the spouses' declaration of their willingness to enter into marriage. Their consent must be given clearly, expressly, unconditionally and in a clear and audible voice. Deaf and dumb persons must express their consent by signs or indications that leave no doubt as to their wish to marry. The marriage contract is drawn up and finalized on the basis of free and mutual consent.

315. The Constitution lays down principles regulating the responsibility of the State and society *vis-à-vis* the organization and protection of the family. It stipulates that the State shall protect the family as the basic and fundamental institution of society, and shall guarantee comprehensive protection for the family and the primacy of the right to life. In addition, legal recognition is extended to de facto families, known as "de facto marital unions". At all events, the family must be formed by natural bonds, de facto union or matrimonial or juridical bonds.

National Family Welfare System

316. *Institutional framework*. Colombia possesses a National Family Welfare System (SNBF). The linchpin of the system is the Colombian Family Welfare Institute (ICBF), which was established by Act No. 75 of 1968 as a public establishment attached to the Ministry of Health.

317. Decree No. 2737 of 1989 promulgated the Minors' Code, which expanded ICBF's role in the protection of young offenders. The aim of ICBF was amended to read: "to foster and enhance the integration and harmonious development of the family, to protect minors and to safeguard their rights". This new legal framework lays stress on parental responsibility and assigns to the Institute's actions subsidiary status within a framework of community participation, rather than as a substitute for the role of the family. The same Decree designated as a priority target group persons in a situation of greatest socio-economic, nutritional, psychological, affective and moral vulnerability and in the irregular situations provided for in the Minors' Code. In order fully to discharge these functions, ICBF coordinates the activities of SNBF (established by Act No. 7 of 1979).

318. The aim of SNBF is to maximize use of the system's existing service networks, in order to expand coverage and integrate services, thereby rationalizing costs and expenditure, and to supplement programmes with new components which will improve their quality and coverage.

319. From the private sector, 68 family compensation funds and all the religious, political and other NGOs pursuing family-oriented activities belong to SNBF. The Colombian Family Welfare Institute's headquarters are in the capital and there are 26 regional offices throughout the country. These regional offices in turn comprise 190 district centres operating in the largest towns in each region.

320. Achievements. The Institute's programmes are important not only nationally, but also internationally. The Colombian model has been adopted by several developing countries because it provides services in an innovative manner, using appropriate technologies that make it possible to provide suitable nutritional care. The Government has committed itself to giving priority to this approach by signing the Declaration adopted by the World Summit for Children and implementing its Plan of Action.

321. Community Welfare homes. The target population for the Community Welfare Homes programme comprises families with children aged between two and six living in poverty or extreme poverty. According to the 1992 National Household Survey, 75 per cent of households that make use of the services of the Welfare Homes are poor, 63 per cent in large cities and 83 per cent in rural areas. The Welfare Homes have significantly increased their coverage from the 731,051 children they catered for in 1990 to 1,286,630 in 1994, thereby exceeding the target of 1 million children set by the Development Plan. The programme's considerable expansion reflects Colombia's commitment to developing high-coverage and high-social-impact programmes. In addition, between 1991 and 1993 loans worth 11.8 million pesos were granted to 24,583 community mothers to refurbish homes, a total of 1.2 million pesos were approved for the same purpose in 1994, and mothers have continued to receive training in order to improve the programme's quality. Health care for children covered by the programmes was considerably improved. It is important to continue to encourage this sharply focused progress and to increase access to the Institute's programmes by poor households with children aged under seven. Recent studies point to the need to improve the cost-benefit ratio in order to continue expanding coverage.

322. The family, women and children. Between 1990 and 1994 the Welfare Homes underwent a radical change in order to cater for children aged under two and for pregnant and nursing mothers living in poverty. The programme's target population comprised 245,000 children aged under two and 280,000 pregnant mothers. A total of 331,434 children aged under two and 321,039 mothers were actually catered for, i.e. target attainment was 135.3 and 114.7 per cent respectively. The children were provided with nutritional care and supervision, early learning activities and health care. Education projects were organized for pregnant and nursing mothers.

323. Kindergartens. From 1993 onwards a new form of care known as Community Kindergartens was implemented. These operate on community premises and are run by a group of mothers advised by a specialist. A total of

52 kindergartens have so far been established. The aim of this new programme is to provide innovative and alternative means of care and, in particular, to improve the quality of care and to go beyond merely looking after children.

324. Children's homes. Second in importance to the nutritional and preventive care programmes referred to above, which have the greatest impact on the poor and are the Institute's most important, are the children's homes (CAIPs). Although they began to operate in 1977, they have proved a costly alternative with limited potential for expansion, as well as being less effective in targeting groups living in poverty. Nevertheless, a number of studies have drawn attention to the programme's potential as a centre for appropriate technologies suitable for implementation in other comprehensive child-care programmes. The CAIPs have slightly reduced their coverage on account of the need to expand programmes that are more cost-effective in social terms. Coverage fell from 197,816 children in 1990 to 161,671 in 1993. However, new funding and care strategies are being sought for these programmes to enable them to achieve greater impact. When the present Government took office, 98 per cent of the homes' budget was provided by the Institute; its current contribution of about 82 per cent reflects the efforts being made to find new sources of funding.

325. School canteens. The coverage provided by school canteens increased considerably during the period 1990-1994: from a total of 1,559,477 children in 1990, 2,043,671 children were catered for in 1993, a level it is hoped to maintain in 1994. This represents a 31 per cent increase and meets the target of providing for 2 million children set by the development plan for 1994. The programme caters for children attending State schools, thereby ensuring that it benefits the poor. Although the nutritional targets were met, the results could be improved by reorganizing the Institute; this entails decentralizing it, modernizing its management, enhancing its efficiency, defining clear guidelines for private-sector contracting and addressing the labour problem with the community mothers.

Presidential Programme for Youth, Women and the Family

326. During the period covered by this report, the Government established the Presidential Programme for Youth, Women and the Family, in conformity with the provisions of article 42 of the 1991 Constitution regarding the rights of the family and article 188, which assigns to the President of the Republic fundamental responsibility for "guaranteeing the rights and freedoms of all Colombians". The programme was subsequently assigned to the Ministry of Education, with the establishment of the Office of the Deputy Minister for Youth. Each departmental governorate comprises an office for youth, women and the family, and the municipal authorities of the main cities have an office for women's affairs, thereby extending SNBF's range and coverage.

Maternal Welfare System

327. Welfare system. Act No. 50 of 1990 introduced substantial changes in the Colombian labour regime and, in connection with maternal welfare, established provisions such as the following:

A four-week increase in paid maternity leave before and after childbirth, raising it to 12 weeks: in conformity with article 34 of Act No. 50, the total length of compulsory maternity leave is 12 weeks;

Extension of the rights and guarantees of natural mothers to adoptive mothers;

The possibility for mothers to transfer the first of their 12 weeks of maternity leave to their spouse or partner to allow him to be present and to care for her at the time of birth and in the period immediately after birth;

The ban on dismissals of pregnant or nursing female employees is still in force, applying to both the private and public sectors;

In conformity with article 237 of the Substantive Labour Code, female employees are entitled, in the event of a miscarriage, to between two and four weeks' leave paid at the rate they received at the time when the leave began;

Until a female employee's child is six months old, employers are required to grant her two 30-minute rest periods during the working day; if she presents a medical certificate explaining the need for such action, the employer may extend these rest periods. To comply with this obligation, the employer is required to provide, on premises adjacent to those where the mother works, a nursing room or suitable place to keep the child (Decree No. 13, art. 7, of 1967);

Labour and social security legislation also stipulate that mothers are entitled to medical, pharmaceutical, surgical and hospital care for as long as they require, and that such care must be provided without delay, both for working mothers and for the wives or partners of male employees.

328. Special measures for women belonging to vulnerable groups. The Social Security Reform Act (No. 100) of 1993 makes provision, through the Solidarity and Guarantee Fund, for machinery to cater for groups of women without access to social programmes either through their own membership or that of their husband or partner. This measure gives effect to article 43 of the Constitution, which reads: "During pregnancy and after childbirth, women shall be entitled to special assistance and protection from the State, and shall receive from it an allowance if they are unemployed or destitute".

329. Commemoration of the International Year of the Family. In 1994, which had been proclaimed International Year of the Family, Colombia commemorated the event within a context of strengthened democratic processes, decentralization, civic participation and peace. Accordingly, the event was celebrated primarily at the municipal and departmental levels, but without detriment to national commemoration or the commitment of the Government. Joint and priority lines of action, promoted through municipal and departmental plans, were pursued in the areas of law, family support services, research and the development of public awareness. An initial overall conclusion can be drawn from the commemoration of the Year along these lines:

Colombia possesses up-to-date information on the family and is capable of generating social awareness of the diversity of family structures, forms of organization and relations, and of creating and strengthening networks of family support services. An awareness of family issues needs to be cultivated among the general public.

330. The national objectives of the celebration of the International Year were to initiate or galvanize ongoing programmes for the family, for which the following aims were set:

(a) To foster respect for the various types of family, on the understanding that all of them possess equal rights *vis-à-vis* society and the State;

(b) To establish conditions to ensure that the various types of family are entitled, on a daily basis, to respect for differences of sex, age, status, opinion and interest;

(c) To create conditions to allow families, as social support networks, to act as sources of social cohesion; and

(d) To strengthen family support services at the national, regional and local levels, thereby enabling them to perform their functions.

331. As regards legislative and administrative development, the lines of action pursued through local International Year committees were designed, as regards juridical development, to establish a national referral system, to implement a broad and large-scale system of information on basic provisions, procedures and services in the legal sphere, to develop pilot projects specializing in the family in Colombia's legal aid centres and to amend existing provisions. These targets were pursued through the establishment of legal committees and the dissemination of information on legal aspects of family welfare, and through inter-agency coordination.

332. As a result of the actions carried out, by the time the International Year ended legal committees on family problems and committees to protect ill-treated children had been set up in each of Colombia's departments. The public were more aware of the Minors' Code and of the Family Counselling Centres. There were better mechanisms for publicizing legal services through the mass media and a range of machinery for coordinating the various jurisdictional bodies.

333. In the legislative sphere, the preparatory stage included the promulgation of Act No. 82 of 1993, which strengthened the welfare and support system for female heads of household, and the instruction given to Congress to draw up and consider bills on a number of topics, noteworthy among which were the following: the establishment of the national family welfare register; the establishment of the legal regime for community mothers; amendment of the regime relating to marital assets and its liquidation; a family statute in conformity with the new Constitution; recognition of the minimum living area of lawfully constituted families that are unable to purchase an urban

dwelling; the immediate re-employment of dismissed pregnant or nursing employees by the public or private sector; regulation of women's participation at the decision-making levels of the various branches and organs of the public authorities.

Article 24

334. Rights of children and measures to protect them. The protection of children is one of the basic aims of the new Constitution and informs many of its provisions. For the purposes of this report, attention should be drawn to the provisions of articles 13, 16, 42, 43 and 44 of the Constitution as they lay down the general and specific framework for the protection of the rights of children.

> "Article 13. All persons are born free and equal before the law, shall be given equal protection and treatment by the authorities, and shall enjoy the same rights, freedoms and opportunities without any discrimination on grounds of sex, race, national or family origin, language, religion, political opinion or philosophy.
>
> The State shall promote the conditions necessary to ensure that equality is real and effective and shall adopt measures in support of groups that are discriminated against or marginalized.
>
> The State shall provide special protection for those persons who, on account of their economic, physical or mental condition, are in obviously vulnerable circumstances and shall punish any abuse or ill-treatment to which they may be subjected.
>
> Article 14. Every person is entitled to recognition of his legal personality.
>
> Article 16. All persons are entitled freely to develop their personality subject to no limitations other than those imposed by the rights of others and the legal order.
>
> Article 42. The family is the fundamental unit of society. It is formed through natural or legal ties, by the free decision of a man and woman to enter into marriage or by their responsible desire to form a family.
>
> The State and society shall guarantee comprehensive protection for the family. The law may determine the inalienable and non-seizable nature of family assets.
>
> The family's honour, dignity and privacy are inviolable.
>
> Family relations are based on the equality of rights and duties of the couple and on mutual respect among family members. Any form of violence in the family is considered destructive of its harmony and unity and shall be punished in accordance with the law.

Children born within or outside wedlock, adopted or conceived naturally or with scientific assistance have equal rights and duties.

The law shall establish regulations concerning parental responsibility.

The couple have the right freely and responsibly to decide the number of their children and shall be required to support them and bring them up while they are under age or disabled.

The forms of marriage, the age and capacity to enter into marriage, the rights and duties of the spouses, their separation and dissolution of marriage are governed by civil law.

Religious marriages shall have civil effects in the conditions established by law.

The civil effects of any marriage shall cease through divorce in accordance with civil law.

Decrees of annulment of religious marriages issued by the authorities of the faith in question shall also have civil effects, in the conditions established by law.

The law shall determine matters relating to the civil status of persons and the consequent rights and duties.

Article 43. Women and men have equal rights and opportunities. Women may not be subjected to any kind of discrimination. During pregnancy and after childbirth women shall be entitled to special assistance and protection from the State, and shall receive from it an allowance if they are unemployed or destitute.

The State shall provide special support for female heads of household.

Article 44. Children have the following fundamental rights: the right to life, physical integrity, health and social security, a balanced diet, a name and a nationality, the right to have a family and not to be separated from it, the right to care and love, education and culture, and leisure, and the right freely to express their opinion. They shall be protected against any form of neglect, physical or moral violence, abduction, sale, sexual abuse, exploitation at work, economic exploitation and hazardous work. They shall also be entitled to the other rights enshrined in the Constitution, in the laws and in the international treaties ratified by Colombia.

The family, society and the State have an obligation to assist and protect children so as to ensure their harmonious and comprehensive development and the full exercise of their rights. Any person may require the competent authorities to comply with this obligation and to punish those who violate it. The rights of children take precedence over the rights of other persons."

335. Regarding the rights of children and their protection, the provisions of article 44 of the Constitution are particularly noteworthy. As is apparent from its wording, this article elaborates on the provisions of article 24 of the Covenant and of the 1989 Convention on the Rights of the Child, to which Colombia is a contracting party. Special attention should be drawn to the direct reference in article 44 to international treaties ratified by Colombia since, in conformity with the case law of the Constitutional Court regarding the "constitutional body of law", treaties under international human rights law and international humanitarian law which contain general or specific provisions on the rights of children and to which Colombia is a party take precedence over domestic law.

336. Legal regime for the protection of children. On 27 November 1989, a few days before the Convention on the Rights of the Child was adopted, Colombia enacted the Minors' Code through Decree No. 2737 of 1989. Before the Code was promulgated, the drafting committee reviewed its text to ensure that it was compatible with the draft Convention on the Rights of the Child which was then being debated by the United Nations General Assembly. Article 2 of the Minors' Code provides as follows:

> "Article 2. The rights set forth in the Constitution, in the present Code and in the other laws and regulations in force shall be recognized for all minors without any discrimination on grounds of race, colour, sex, language, religion, political opinion or other status, whether of themselves, of their parents or of their legal representatives".

337. As a vulnerable group and not having the ability to produce the necessary resources for defending themselves, children are the subject of what is known as "positive discrimination" in that a special legislative framework has been developed for their benefit, guided by special principles aimed at harmonizing their situation *vis-à-vis* the rest of society.

338. Vulnerable children and welfare systems. Colombia has a total child population of 14 million, 41 per cent of whom live in poverty and 15.6 per cent in extreme poverty. This group enjoys special protection under the Government's social policy, as set out in the National Development Plan - the "social leap". In conformity with this policy, the document of the National Economic and Social Policy Council (CONPES), dated 7 July 1995, was approved. It defines the following principles for social policy focusing on children: full recognition of the rights of children; the creation of opportunities to enable children and young people to develop the basic skills that will enable them to take their proper place in society when they become adults; and the strengthening of the family.

339. The objectives of the Institutional Development Plan of the Colombian Family Welfare Institute (ICBF) for the period 1995 to 1998 are the provision of care for children, nutrition and the family, the transfer of responsibility for family welfare services to municipalities, and the modernization of institutions. The overall aim is to develop comprehensive care for families by strengthening the role of municipalities as the implementing agencies for social policy, in close cooperation with the community. In Colombia as in

other countries throughout the world, the problem of vulnerable children is the result of shortcomings in the family and in the economic and social spheres, and of the failure of parents and those who should normally protect children to perform this function.

340. Some of these developments have aroused the interest of individuals and of local, national and international bodies, as a result of which studies have been carried out to help identify the factors responsible for the deterioration in the development of children and changes in their behaviour.

341. Colombia appreciates the need to continue to define means of comprehensively interpreting these phenomena.

342. The forms of vulnerability identified include the following: intra-family violence, neglect, overcrowding, exploitation at work and drug addiction.

343. Preventive action and programmes. The Government of Colombia implements preventive and special protection programmes focusing on children and the family through ICBF, whose operational framework was described above. The special protection programmes provide guidance and legal, social and nutritional assistance to children, young people and families who, on account of their social and family circumstances, are facing a crisis or breakdown, or are in conflict, vulnerable, or physically or mentally deficient. ICBF executes the following special protection projects:

Special care for families and minors in the institutional, family or open environment;

Care for minors and families involved in civil judicial proceedings;

Production and free or subsidized distribution of the high-nutritional food supplement known under its popular name "Bienestarina";

Family counselling and intervention.

344. Information system. In order to guarantee a better service, the census of minors cared for under the Institute's various programmes is being updated and systematized. For this purpose, the personal records of all minors cared for by ICBF since 1992 are being updated and qualitative criteria applied to specific cases. In conjunction with other State institutions and a number of NGOs, each minor's personal case history is placed on file. This permits the centralization of information and will provide officials, at each stage of protection, with a dynamic tool for finding potential solutions and for follow-up. The first findings of the information system, some 60 per cent of which has already been developed, were that the primary reason for consultations involving children is legal (paternity, parental authority, maintenance payments, custody), the second intra-family conflicts (violence between spouses, child abuse), and the third nutritional problems.

345. Nutrition. The programmes currently being implemented by ICBF will continue over the next four years on a permanent basis with the following new objectives:

(a) The objective for the 54,649 Community Welfare Homes caring for 1,289,190 children aged under 7 is to provide 73 per cent of recommended food requirements, thus considerably improving the children's nutritional standards;

(b) A food voucher for preschool children has been introduced (in rural areas) with the aim of covering 140,000 poor children in four years and providing a food supplement for pregnant and nursing mothers;

(c) It is planned to replace the usual snack currently provided in school canteens by an improved snack, so that in four years 100 per cent of children cared for by ICBF will receive a food supplement providing 20 per cent of recommended nutritional intake for 130 days of the year;

(d) In rural areas, the objective is for the Community Homes programme to cater for some 280,000 young children, 197,000 of whom will receive a food supplement.

346. Care for street children. In addition to the programmes already implemented by ICBF, the Government is endeavouring to help the local authorities to organize services to meet the basic needs of street children by encouraging them to leave the street environment and take their place in the community, with special emphasis on the rehabilitation of child drug consumers and addicts.

347. Protection for minors in especially difficult circumstances. Programmes for the protection of minors in special circumstances will be strengthened by expanding conciliation procedures (extrajudicial care for minors and their families), strengthening the network for the prevention of ill-treatment, raising the standard of foster home services, and improving services for young offenders. The aim of these programmes is to respond to the situation of some 2 million children who find themselves in especially difficult circumstances because of ill-treatment or neglect by their families. To achieve this, services will be set up to care for ill-treated children, initially in Bogotá, Medellín, Cali and Bucaramanga; machinery to identify networks trafficking in children and to report them to the judicial authorities will be strengthened; children will be helped to give up prostitution through the strengthening of teaching programmes and joint work with educational establishments; work by children aged under 14 will be discouraged and assistance provided to working children through joint activities with the Ministry of Labour and the establishment of citizens' watches to protect working children.

348. These ICBF goals for the next four years are based on the progress it has made over the past decade in caring for 72 per cent of its target population. In achieving this improvement the information system offers an ideal tool to develop a register of providers of protection services, i.e of those institutions able to assist ICBF in performing its protective role and bringing it closer to the community.

349. Reform of the Minors' Code. In order to improve the response by the State to the problems of children, the Government of Colombia is in the process of reforming the Minors' Code in order to improve care and protection for children. The reform's objectives include the following:

(a) To strengthen provisions relating to the rights of children;

(b) To bring the Code into line with the Convention and the protocols thereto, by including habeas corpus and a second instance in proceedings into which it has not yet been introduced.

350. In 1993, an average of 5 crimes a day were committed against the life or physical integrity of children, 11 crimes against sexual freedom and decency, and 7 against individual freedom. There were a total of 2,758 homicides of children. The Public Prosecutor brought charges in 744 of the cases recorded and 183 persons are under arrest.

351. One of the major challenges facing Colombia is impunity for offences against minors. In response to violations of the rights of children, and notwithstanding the complaints lodged and investigations initiated by the Attorney General's Office, the Office of the Ombudsman and the Office of the Public Prosecutor, ICBF has decided to establish a programme on the human rights of children with the aim of following up violations of their rights, fostering the development of a child-friendly culture by implementing the human rights of children, and improving decision-making which affects children so as to give priority to safeguarding their rights.

352. Strengthening of the Family Counselling Centres. The Family Counselling Centres are institutions that respond to requests for State intervention in solving family problems and permit the development of means of preventing such situations and of fostering conciliation and the non-judicial settlement of disputes. Accordingly, the aim of the Centres is to protect citizens' rights and, in particular, the rights of children and their physical and mental integrity, which, in conformity with the Constitution, take precedence over all other rights.

353. The Family Counselling Centres are the responsibility of the municipal authorities and are established by decision of the relevant municipal councils, which determine the number and structure of the Centres under their jurisdiction. ICBF has implemented a number of strategies to strengthen these Centres. They include the following: promoting the establishment in municipalities of this conciliation mechanism, to ensure that the Centres possess the specialized, multidisciplinary and multi-operational team required in order to comprehensively address the problems of families and children; strengthening institutions, by ensuring job stability for staff working in the Centres; efficiency guaranteeing the rational use of human, financial and teaching resources; development of integrated activities by the Centres and the Family Ombudsman's Offices; and development of an operational project based on conciliation, protection of the rights and duties of parents and children, the rights and obligations of couples, and efforts to prevent violence within the family. This policy should make it possible to establish at least 48 new Family Counselling Centres and to strengthen 114 of the 250 existing Centres. The policy will be implemented in municipalities where social problems are most acute, in particular as regards intra-family violence.

354. Protection of working children. A survey by the National Department of Planning has yielded the following official figures for working minors:

children aged between 5 and 18, between 1.5 and 2.2 million, i.e. between 15 and 20 per cent of all children in this age group; in rural areas, including small towns, between 1.3 and 1.7 million; in larger towns, between 10 and 15 per cent of all children.

355. The Minors' Code deals, in articles 237 to 264, with the question of child labour. It prohibits work by minors under the age of 14 and requires parents to arrange for them to attend school. Exceptionally, and in special circumstances defined by the Family Ombudsman, children over the age of 12 may be allowed to work by the Labour Inspector or, in his absence, by the senior local authority upon application by the parents or, in their absence, by the Family Ombudsman.

356. The maximum duration of a minor's working day is governed by rules laid down in article 242 of the Minors' Code:

(a) Minors aged between 12 and 14 may work only for a maximum period of four hours per day, on light duties;

(b) Minors aged between 14 and 16 may work only for a maximum of six hours per day;

(c) The working day of minors aged between 16 and 18 may not exceed eight hours;

(d) Night work by minors is prohibited. However, minors aged between 16 and 18 may be authorized to work until 8 p.m., provided this does not affect their regular attendance at an educational establishment or impair their physical or moral health.

357. Articles 243 and 244 of the Code provide as follows:

> "Article 243. Child workers shall be entitled to the wages, social benefits and other benefits which the law grants to workers aged over 18.
>
> The wages of child workers shall be proportionate to the hours worked.
>
> Article 244. Child workers shall be entitled to training and shall be granted unpaid leave when their schooling so requires."

358. Articles 245 and 246 of the Code list the types of work in which minors may not be employed.

> "Article 245. Minors may not be employed in the types of work listed hereunder, because they involve a strong risk of endangering their health or physical integrity:
>
> 1. Work involving toxic substances or substances harmful to health;
>
> 2. Work at abnormal temperatures or in an environment that is polluted or lacks sufficient ventilation;

3. Mining work of all kinds below ground and work involving harmful agents such as pollutants, thermal disequilibrium, or lack of oxygen owing to oxidation or gasification;

4. Work in which the minor is exposed to noise exceeding 80 decibels;

5. Work involving the handling of radioactive substances, luminescent paint or X-rays or which involves exposure to ultraviolet or infrared radiation or emission of radio waves;

6. All kinds of work involving exposure to high-voltage electric currents;

7. Work under water;

8. Work involving the handling of rubbish or any other type of activity where pathogenic, biological agents are generated;

9. Activities involving the handling of explosive, inflammable or caustic substances;

10. Work in coal-bunkers or as stokers on board seagoing vessels;

11. Industrial painting work which involves the use of lead carbonate, lead sulphide or any other product containing these substances;

12. Work on emery-polishing machines, tool-sharpening machines, high-velocity abrasive millstones and similar occupations;

13. Work in blast-furnaces, metal foundries, steel mills, rolling-mills, forges and heavy metal presses;

14. Work and operations involving the handling of heavy loads;

15. Work in connection with gear mechanisms, transmission belts, oil, greasing and other work in the proximity of heavy or high-speed transmissions;

16. Work on shearing machines and other especially dangerous machines;

17. Work with glass and pottery, grinding and mixing of raw materials; work with kilns, dry grinding and polishing in glass-works, cleaning operations by sand blasting, work in glazing and engraving workshops, work in the ceramics industry;

18. Gas and arc-welding work, cutting with oxygen in tanks or confined spaces, on scaffolds or in pre-heated moulds;

19. Work in the production of bricks, piping and the like, hand moulding of bricks, work in brick presses and kilns;

20. Work in operations and/or processes involving high temperatures and high humidity;

21. Work in the metallurgical industry (iron and other metals), in operations and/or processes which release toxic vapours or dust, and work in cement plants;

22. Agricultural or agro-industrial activities involving major health risks;

23. Such other types of work as are specified in regulations issued by the Ministry of Labour and Social Security.

Additional paragraph. Minors aged between 14 and 18 who are pursuing technical studies with the National Apprenticeship Service (SENA) or in a specialized technical institute recognized by the Ministry of Education, or in a similar institution of the National Family Welfare System that has been duly authorized by the Ministry of Labour and Social Security, or who obtain the professional proficiency certificate issued by the SENA may be employed in the activities, occupations or tasks listed in this article which, in the opinion of the Ministry of Labour and Social Security, may be performed without serious risk to their health or physical integrity, provided they receive proper training and provided safety measures are adopted to ensure that they are fully protected against the risks referred to.

Article 246. Workers under the age of 18 are prohibited from performing any work which is injurious to their morals. They are prohibited, in particular, from working in brothels and places of entertainment where alcoholic beverages are consumed. Their employment for the reproduction of pornographic scenes, violent deaths, the advocacy of crime and the like is also prohibited."

359. As a result of the adoption of the Minors' Code, the problems of the economic exploitation of minors have gradually been resolved. Inspectors and supervisory staff from the Ministry of Labour and Social Security carry out periodic visits to undertakings to determine whether they are employing minors and observing the standards laid down for their protection. In order to safeguard the rights of minors, the Ministry fines persons found to be in breach of the law. If an undertaking has endangered the life of a minor or is guilty of a violation of morals and decency, it is closed down. The Labour Inspector's authorization is essential for the employment of minors.

360. Right to participation. In Colombia, children's participation has increased over the past three years. As a result of the adoption of the General Education Act (No. 115), school councils were established in public and private educational establishments, allowing children to develop organizational structures and democratic practices whereby they identify their own interests, appreciate the value of peaceful means of settling disputes, and determine their objectives and expectations. In addition, in a number of cities pupils are encouraged to elect a "student mayor" so as to expand their participation beyond primary and secondary school.

361. New international commitments. On 25 October 1980, Colombia signed the Convention on the Civil Aspects of International Child Abduction, which was approved by Act No. 173 of 22 December 1994. On 29 May 1993 at The Hague,

Colombia signed the Convention on Protection of Children and Cooperation in respect of Intercountry Adoption. This Convention was submitted to the Senate in Bill No. 28 of 1994, which was adopted on first reading and is currently being ratified by the House of Representatives.

Article 25

362. Political rights and the right to take part in the conduct of public affairs. Article 40 of the 1991 Constitution guarantees the exercise of political rights:

> "Article 40. Every citizen has the right to participate in the establishment, exercise and control of political power. In order to exercise this right, citizens may:
>
> 1. Vote and be elected;
> 2. Take part in elections, plebiscites, referendums, popular consultations and other forms of democratic participation;
> 3. Form political parties, movements or groups without any restriction whatever; freely participate in them and disseminate their ideas and programmes;
> 4. Revoke the mandates of elected officials in cases, and in the form, established by the Constitution and the law;
> 5. Act in public bodies;
> 6. Exercise the public right of action in defence of the Constitution and the law;
> 7. Hold public office, with the exception of Colombian citizens, native-born or naturalized, who hold dual citizenship. The law shall establish regulations concerning this exception and determine the cases in which it applies.
>
> The authorities shall guarantee the adequate and effective participation of women at the decision-making levels of the public administration."

363. In addition to the provisions of article 40 of the Constitution, which define the political rights of Colombians, Title IV of the Constitution, on democratic participation and political parties, establishes the basic provisions governing forms of democratic participation, the organization and functioning of political parties and movements, and the provisions guaranteeing the exercise of political opposition. Chapter 1 of this Title, which deals with the principle of popular sovereignty and participatory democracy, establishes elections, plebiscites, referendums, popular consultations, open council meetings, legislative initiatives and the removal of officials as forms of citizen participation. Chapter 2 governs matters relating to political parties and, as a consequence of the right of association, guarantees the right of all citizens to form, join and participate in political parties and movements. Chapter 3 defines the

status of the opposition and guarantees parties and movements that do not participate in the Government the full exercise of political opposition.

364. Article 103 of the Constitution gives the following definition of mechanisms for democratic participation:

> "Article 103. The means for the people to participate in the exercise of their sovereignty are: the vote, the plebiscite, the referendum, consultation of the people, the open council meetings, the legislative initiative and the removal of officials.
>
> The law shall regulate these matters.
>
> The State shall contribute to the organization, promotion and training of professional, civic, trade union, community, youth and charitable or public-purpose non-governmental associations, without detriment to their autonomy, so that they may constitute democratic mechanisms for representation in the various bodies established for the purpose of participation in, consultation on, and control and supervision of the conduct of public affairs."

365. A commentary on these matters in the context of article 1 of the Covenant has already been prepared, mentioning Acts Nos. 130, 131 and 134 of 1994 (annexes 17, 18 and 19), which elaborate on article 130 of the Constitution.

(a) Act No. 130 of 1994, Basic Statute of Political Parties and Movements (annex 17). Under this legal statute, all Colombians have the right to form political parties and movements. Such parties and movements have juridical personality; they may nominate candidates to any office in public elections, finance their political campaigns with State and private funds within certain financial limits, and publicize their ideas and proposals. Their accounts must be rendered public;

(b) Act No. 131 of 1994, which regulates voting for political programmes and authorizes exercise of the right to remove popularly elected public servants (annex 18);

(c) Act No. 134 of 1994 on mechanisms for citizen participation (annex 19), which regulates popular legislative and regulatory initiatives, referendums, national, departmental, district, municipal and local popular consultations, the removal of popularly elected public servants, plebiscites and open council meetings. Pursuant to Act No. 134, the Government issued Decree No. 2629 of 29 November 1994 (annex 19 bis) creating the Citizen Participation Fund under the Ministry of the Interior.

366. The creation of forums for participation in administrative management at the national and local levels is guaranteed in various instruments such as Act No. 99 of 1993 on the environment, Act No. 152 of 1994 (Development Plan Organization Act), Act No. 100 of 1993, regulating the National Health and

Social Security System, Act No. 115 of 1994 on the reform of the education system, Act No. 70 of 1993 on the rights, participation and development of Afro-Colombian communities, and Decrees Nos. 36 of 1992 and 1809 of 1993 on the national policy on indigenous peoples.

367. The National Economic and Social Policy Council (CONPES) approved the initiation or strengthening of the following programmes with the participation of civil society (CONPES document No. 2779 of May 1995):

(a) Publicizing the mechanisms for political participation contained in Act No. 13 of 1990 and of other mechanisms through the Citizen Participation Fund (Ministry of the Interior, President's Institutional Development Office, National Civil Registry);

(b) Creation of the Inter-Agency Participation Committee under the Ministry of the Interior;

(c) Creation of the PARTICIPAR database on the legal framework for participation; wide dissemination of the related legal provisions (Institutional Development Office, Ministry of the Interior);

(d) Dissemination by each ministry of information on forums for participation, coordinated by the Inter-Agency Participation Committee;

(e) Programmes to develop the capacity for participation of citizens, civil organizations and their leaders (Ministry of the Interior, Social Solidarity Network, Citizen Participation Fund);

(f) Development of the "Trato Hecho" (Done Deal) programme to promote civil servants' respect for the rights of citizens and commitment to citizen participation (Institutional Development Office);

(g) Preparation, pursuant to articles 2, 39, 5, 103, 270 and 355 of the Constitution and in cooperation with civil organizations, of a legal framework for the participation of such organizations (Ministry of the Interior, President's Social Policy and Institutional Development Offices);

(h) Promotion of citizens' watch groups and their coordination with public monitoring bodies (Ministry of the Interior);

(i) Establishment of methodologies for measuring citizen participation, the quality of government and legitimacy of the Colombian political system; development of annual seminars to evaluate policies for encouraging participation and citizens' exercise of their rights in this regard (Ministry of the Interior, Citizen Participation Fund).

368. Rapid changes in Colombia's political and economic situation and the persistence of phenomena of social conflict require the State and civil society to make a great effort to implement the constitutional reforms and the acts adopted pursuant to them. For this purpose Colombia has a broad, democratic and participatory legal foundation and a political commitment by State institutions to disseminate the laws and to promote and defend the rights enshrined therein.

369. The participation of Colombian men and women in political and public affairs has been increased through legal instruments such as the Electoral Code (Decree No. 2241 of 1986) and Act No. 84 of 1993, which contain amendments to the election laws. Elections and the electoral system are regulated in Colombia by Title IX of the Constitution, beginning with article 258. The Constitution establishes that voting is a right and a civic duty, defines the basic mechanisms for exercise of the right to vote and the system of voting for political programmes in gubernatorial and mayoral elections, and establishes the Electoral Organization independent of the Government. This Organization is headed by the National Electoral Council (art. 264), whose chief administrative and executive body is the National Civil Registry (art. 266) and which is also independent of the Government.

370. The Criminal Code defines the violation of political rights as an offence:

> "Criminal Code. Article 293. Violation of political rights. Any person who disrupts or impedes the exercise of political rights through an act of violence or deception in cases other than those specifically defined as offences shall be liable to between 6 and 18 months of imprisonment.
>
> If the person responsible for the act described in the preceding paragraph is a State employee, he shall also be dismissed from his post."

371. The mechanisms for citizen participation, pursuant to articles 2 and 40 of the Constitution, may be described as follows:

(a) Voting is a voluntary act through which citizens participate in the election of those who represent them in State leadership and administration or in a decision regarding the adoption of specific legislation. It is the concrete exercise of the right to suffrage and, in accordance with the democratic values enshrined in the 1991 Constitution, it can only be universal, secret and free, carried out through free, periodic and open electoral processes or elections that are genuinely capable of guaranteeing a change in political power when the majority so decides. Voting for the purpose of adopting or rejecting a law may take place through plebiscites, referendums or popular consultations;

(b) In a plebiscite, the electorate is called upon directly to decide its fate in an autonomous manner. It is thus a question not of endorsing a previously adopted policy, but of deciding which policy is to be followed, and even an obligatory consultation on the situation of persons who constitute the Government;

(c) A referendum is a mechanism through which the electorate is called upon to approve or reject a proposed enactment. It is provided for by the Constitution in the case of constitutional reforms (arts. 371 and 377), legislative reforms (art. 170) and the creation of regions (departmental referendum, art. 307);

(d) A popular consultation is an opinion poll on a given policy, a proposed enactment or matters of general interest;

(e) An open council meeting is a public meeting in a given municipality, district or commune for the purpose of considering matters concerning residents which are within the competence of the municipal or district council or local administrative board;

(f) Legislative initiative is the right which the Constitution grants to citizens to submit proposed legislation or constitutional reforms directly to Congress;

(g) The removal of officials is the power of the people to revoke the mandate of public administrators at the departmental and municipal levels if they have not fulfilled the promises made in their electoral programmes.

These mechanisms are regulated in detail by Act No. 134 of 1994, Statutory Act governing the Mechanisms for Popular Participation (annex 19).

372. Title IX, Chapter 2, of the Constitution regulates the exercise of the right to establish, organize and develop political parties and movements and the freedom to join or withdraw from them. It also guarantees the right of organizations to demonstrate and to participate in political events. Act No. 130 of 1994, (Statutory Act on political Parties and Movements - see annex 17) was adopted pursuant to those provisions.

373. Lastly, article 112 of the Constitution defines the status of the opposition, the legal regulations governing which are still pending; the Government has placed before Congress a bill (House of Representatives Bill No. 118 of 1995), discussion of which will commence during the session beginning on 20 July 1996. On 15 May 1995, the President of the Republic inaugurated the Commission on the Reform of the Political Parties, which submitted its technical memorandum (annex 39), including the above-mentioned bill, in January 1996.

Article 26

374. Right to equality before the law and guarantees against discrimination. The 1991 Constituent Assembly for the first time added to the Colombian Constitution a specific provision guaranteeing equality before the law and prohibiting any type of discrimination. As established by the Covenant, the principle of non-discrimination does not merely duplicate the other rights established in this international instrument but provides in itself an autonomous right. In this connection, the constitutional provision which establishes the principle of non-discrimination stipulates that it is a fundamental right and, as such, can be invoked directly and promptly by any citizen through the above-mentioned protection mechanism. Thus, the Constituent Assembly introduced this important provision, reproduced almost literally, into the national Constitution.

375. Furthermore, and also in accordance with the Human Rights Committee's comments on this article of the Covenant, the Colombian Constitution not only prohibits any type of discrimination but also requires the State to promote

the conditions necessary for real and effective equality and to provide special protection for those who are clearly in a vulnerable situation. Article 13 of the Constitution reads:

> "Article 13. All persons are born free and equal before the law, shall be given equal protection and treatment by the authorities, and shall enjoy the same rights, freedoms and opportunities without any discrimination on grounds of sex, race, national or family origin, language, religion, political opinion or philosophy.
>
> The State shall promote the conditions necessary to ensure that equality is real and effective and shall adopt measures in support of groups that are discriminated against or marginalized.
>
> The State shall provide special protection to those persons who, on account of their economic, physical or mental condition, are in obviously vulnerable circumstances and shall punish any abuse or ill-treatment to which they may be subjected."

376. The legal and administrative proceedings which guarantee implementation of the principle of non-discrimination in the various aspects of the life of society are described in other sections of this report and in Colombia's third periodic report on the implementation of the International Covenant on Economic, Social and Cultural Rights, its seventh periodic report on the implementation of the International Convention on the Elimination of All Forms of Racial Discrimination, its third periodic report on the implementation of the Convention on the Elimination of All Forms of Discrimination against Women, and its initial report on the implementation of the Convention on the Rights of the Child.

Article 27

377. Rights of ethnic, religious and linguistic minorities. With regard to the rights of the ethnic minorities, important changes were made in the 1991 Constitution. The Constitution has numerous provisions which are specially designed to safeguard the rights of the indigenous peoples and Afro-Colombian and aboriginal communities living in the country, specifically recognizing the nation's ethnic and cultural diversity and defining it as a pluralist and participatory republic:

> "Article 1. Colombia is a social State governed by law and organized as a unitary, democratic, participatory and pluralist republic, decentralized with autonomous territorial units. It is founded upon respect for human dignity, the work and solidarity of the individuals constituting it and the primacy of the general interest."

378. The 1991 Constitution introduced considerable advances in the recognition and promotion of the legal, social and political equality of all cultures present in the country. Articles 7, 8, 10, 13, 17 and 70 of the Constitution form the basis for recognition of the equality of the Black and indigenous communities and the promotion of their rights.

> "Article 7. The State recognizes and protects the ethnic and cultural diversity of the Colombian nation.
>
> Article 10. Spanish is the official language of Colombia. The languages and dialects of the ethnic groups are also official in their territories. The education provided in the communities with their own linguistic traditions shall be bilingual.
>
> Article 13. All persons are born free and equal before the law, shall be given equal protection and treatment by the authorities, and shall enjoy the same rights, freedoms and opportunities without any discrimination on grounds of sex, race, national or family origin, language, religion, political opinion or philosophy.
>
> The State shall promote the conditions necessary to ensure that equality is real and effective and shall adopt measures in support of groups that are discriminated against or marginalized ... .
>
> Article 70. The State has the duty to promote and foster the equal access of all Colombians to culture by means of permanent education and scientific, technical, artistic and vocational instruction at every stage of the process of creating a national identity.
>
> Culture in its diverse manifestations is the basis of nationality. The State recognizes the equality and dignity of all those which exist together in Colombia. The State shall promote research, science, development and the dissemination of the nation's cultural values."

379. However, the Constitution not only establishes legal guarantees for the elimination of all forms of discrimination against the indigenous groups and Afro-Colombian and aboriginal communities; it also provides for machinery to guarantee promotion of the development of each of them according to its particular outlook on the universe and culture.

380. The fundamental rights of ethnic groups guaranteed by the Colombian Constitution are the following:

(a) The right to recognition and protection of their ethnic and cultural diversity by the State (art. 7);

(b) The right to recognition of their languages and dialects as official in their territories (art. 10);

(c) The right to bilingual education in communities with their own linguistic traditions (art. 10);

(d) The right to freedom and equality before the law without any type of discrimination on grounds of race, national or family origin, language, religion or political or religious opinion (arts. 13, 18, 19 and 20);

(e) The right to the inalienability, imprescriptibility and guarantee against seizure of their communal lands and reservations (art. 63);

(f) The right to participate in the management, financing and administration of State educational services (art. 67);

(g) The right to an education which respects and develops their cultural identity (art. 68);

(h) The right to recognition of their cultural events, on an equal footing, as a basis of the national identity (art. 70);

(i) Special rights with regard to the archaeological heritage of the territories which they occupy (art. 72);

(j) The right of indigenous peoples sharing territories in border areas to Colombian nationality (art. 96);

(k) The right to political participation, with two indigenous senators and two representatives of the Black communities in the House, to be elected by a special national constituency (arts. 171 and 176);

(l) The right to have to their own indigenous authorities and to settle problems and disputes arising in their territories, in accordance with their traditions and customs (arts. 246 and 330);

(m) The right to establish indigenous territories as autonomous territorial entities, governing themselves under their own authorities, to administer their resources, to establish the necessary taxes, and to share in national revenue (arts. 286, 287, 328, 329 and 330);

(n) The right to ensure that the exploitation of natural resources in indigenous territories does not impair the social, economic and cultural identity of their communities and the right of their representatives to be consulted in such matters (art. 330);

(o) The right of indigenous reservations to be considered as municipalities for the purpose of sharing in the current revenue of the nation (art. 357);

(p) The right to recognition of the collective ownership of uncultivated lands occupied by Black communities (transitional art. 55);

(q) The right to the establishment of machinery for the protection of the cultural identity of Black communities and for the promotion of their economic and social development (transitional art. 55).

381. Transitional article 55 of the Constitution required the promulgation of an act granting Black communities which have come to occupy rural areas adjoining the rivers of the Pacific Basin, in accordance with their traditional production practices, the right to collective ownership of the lands specified in that act. The Constitution also stipulated that that same act should establish the necessary machinery for the protection of the cultural identity and rights of those communities and for the promotion of their economic and social development. That constitutional mandate was fulfilled by Act No. 70 of 27 August 1993 (annex 40), the Colombian Indigenous

Peoples' Charter, which was published by the Ministry of the Interior and is a compilation of the laws and regulations that constitute the law code of the indigenous peoples.

382. Articles 330 and 246 of the Constitution recognize the political, administrative and juridical autonomy of the indigenous communities, which must exercise that autonomy in accordance with their own traditions and customs, provided that these are not contrary to the Constitution or the law. Article 329 stipulates that the indigenous territorial entities shall be established subject to the provisions of the Territorial Planning Organization Act. Transitional article 56 authorized the Government to prescribe the necessary fiscal and other regulations relating to the functioning of indigenous territories.

383. Development of policies to protect the rights of the Black and Afro-Colombian communities. As stated above, the 1991 Constitution not only proclaimed the participatory and pluralist character of the nation, recognizing its ethnic and cultural diversity, but also made special reference to the problems of the country's Black community in transitional article 55, which reads:

> "Article 55 - transitional. Within the two years following the entry into force of the present Constitution, Congress shall, following a study by a special commission which the Government shall establish for that purpose, enact a law recognizing the right of Black communities which have come to occupy uncultivated lands in rural areas adjoining the rivers of the Pacific Basin, in accordance with their traditional production practices, to collective ownership of the lands specified in that law.
>
> In every case, representatives elected by the communities concerned shall participate in the work of the special commission referred to in the preceding paragraph.
>
> The property thus recognized shall be transferable only in the conditions stipulated by the law.
>
> That law shall also establish the necessary machinery for the protection of the cultural identity and rights of these communities and for the promotion of their economic and social development."

384. Pursuant to that constitutional provision, as previously stated, Congress promulgated Act No. 70 of 27 August 1993. This Act contains numerous provisions confirming the condemnation of racial discrimination and introducing special measures in the social, economic and cultural spheres to ensure the adequate development and protection of the members of the Black communities. The following elements of the Act deserve particular mention:

(a) Principles:

(i) The recognition and protection of ethnic and cultural diversity and the right to equality of all the cultures which make up the Colombian national identity;

(ii) Respect for the integral nature and dignity of the cultural life of the Black communities;

(iii) Participation by the Black communities and their organizations, without prejudice to their autonomy, on an equal footing and in accordance with the law, in decisions that affect them and those that concern the nation in its entirety;

(iv) Protection of the environment, taking into account the relations with nature established by the Black communities;

(b) Territory: One of the most important problems which the above-mentioned Act seeks to solve is that of the disputes over land in the Pacific Coast region. In that region, the majority of whose inhabitants belong to the Afro-Colombian community, possession of rural land is largely of a de facto nature; in other words, it does not rest on written deeds of title. The local inhabitants have occupied and cultivated those lands since ancient times without any express recognition in law guaranteeing them permanent title. Act No. 70 delimits the Pacific Coast region, where a process shall be carried out granting title to the lands in question. To this end, a series of bodies are being established to cooperate in the achievement of this goal and to serve as links between the community and the Government.

(c) Natural resources: In view of the natural wealth of the rural areas adjoining the Pacific Basin, and of the fact that the principal means of subsistence of the Black communities consists of the exploitation of their natural resources, the law creates a number of mechanisms to safeguard the appropriate and sustainable use of natural resources. There is a general prohibition of the issuing of permits for the exploitation of the natural resources of this region until the adjudication of land to the Black communities has been completed;

(d) Mining resources: As stated above, the rural Black communities living in the area of the Pacific Basin have a natural economy involving exploitation of the resources of the soil, including mining. The Ministry of Mining and Energy, with the assistance of representatives of the Afro-Colombian community, is currently drawing up regulations to accompany the chapter of Act No. 70 that deals with the subject.

385. Mechanisms for the protection and development of rights and cultural identity. Articles 32 and 33 of Act No. 70 stipulate as follows:

> "Article 32. The Colombian State recognizes and guarantees to the Black communities the right to an education system in accordance with their ethno-cultural needs and aspirations. The competent

> authority shall adopt the necessary measures to ensure that curricula conform to this provision at each educational level.
>
> Article 33. The State shall punish and avoid any act of intimidation, segregation, discrimination or racism against the Black communities in the various spheres of society, in the public administration at its upper decision-making levels and especially in the mass media and the education system, and shall ensure implementation of the principles of equality and respect for ethnic and cultural diversity.
>
> To these ends, the competent authorities shall impose the appropriate penalties in accordance with the provisions of the National Police Code, the provisions governing the mass media and the education system, and other applicable instruments."

386. Development of policies to protect the rights of the indigenous communities. Pursuant to the provisions of transitional article 56 of the Constitution, the Government issued Decrees Nos. 1088 and 1809 of 1993 (reproduced in annex), which regulate the right of the indigenous communities to govern themselves according to their traditions and customs, as established in article 330 of the Constitution, which reads:

> "Article 330. In accordance with the Constitution and the laws, the indigenous territories shall be governed by councils formed and regulated according to the traditions and customs of their communities and shall exercise the following functions:
>
> 1. Oversee implementation of the legal provisions concerning land use and the settlement of their territories;
>
> 2. Design policies and economic and social development plans and programmes within their respective territories, in a manner consistent with the National Development Plan;
>
> 3. Promote public investment in their territories and supervise its proper implementation;
>
> 4. Collect and distribute their funds;
>
> 5. Oversee the conservation of natural resources;
>
> 6. Coordinate the programmes and projects promoted by the various communities in their respective territories;
>
> 7. Cooperate in the maintenance of public order within their respective territories in accordance with the instructions and provisions issued by the Government;
>
> 8. Represent the respective territories *vis-à-vis* the Government and the other entities of which they form part; and
>
> 9. Other matters as specified by the Constitution and the law.

> Additional paragraph. The exploitation of natural resources in the indigenous territories shall be effected without impairing the cultural, social and economic integrity of the indigenous communities. The Government shall encourage the participation of the representatives of the communities concerned in decisions adopted with regard to such exploitation."

387. In addition, article 246 of the Constitution grants jurisdictional capacity to the indigenous communities:

> "Article 246. The authorities of the indigenous peoples may exercise jurisdictional functions within their territorial boundaries, in accordance with their own laws and procedures, provided that these are not contrary to the Constitution or laws of the Republic. The law shall establish the forms of coordination between this special jurisdiction and the national judicial system."

388. Article 171 of the Constitution establishes a special constituency for two senators elected by the indigenous communities. They are required to have held positions of traditional authority in their respective communities.

389. There is no doubt that these constitutional provisions, and the developments emanating therefrom, place the Republic of Colombia in the forefront of the struggle against acts of racial discrimination; they constitute a model in the quest for social integration which is fully recognized as such by the nations of the world. With this aim in mind, Colombia is currently developing the following legal, institutional, administrative and judicial development processes designed to improve the existing systems and to provide specific protection of the indigenous communities.

390. Developments in the legal field. During the past two years, the following laws and regulatory decrees (annexed) have been promulgated:

(a) Act No. 43 of 1993, concerning dual nationality for members of indigenous groups living in border areas. It grants nationality by adoption to members of indigenous peoples sharing border areas, in pursuance of the principle of reciprocity and in accordance with any public treaties concluded for this purpose and elaborated on as appropriate;

(b) Act No. 48 of 1993, exempting from compulsory military service members of the indigenous population residing in their respective territories and preserving their economic and cultural traditions;

(c) Act No. 60 of 1993, containing new provisions concerning the participation of indigenous reservations in the current revenue of the nation;

(d) Act No. 115 of 1994, regulating, *inter alia*, matters relating to ethnic education;

(e) Decree No. 1809 of 1993, stipulating that indigenous reservations legally constituted on or before 13 September 1993 shall be deemed municipalities for the purposes of participation in the current revenue of the nation;

(f) Decree No. 1386 of 1994, regulating matters relating to procedures for investment of the resources arising from participation in the current revenue of the nation for the indigenous reservations;

(g) Decree No. 280 of 1994, laying down regulations in respect of part of Act No. 60 of 1993 and containing other special provisions of a transitional nature relating to the participation of indigenous reservations.

391. Institutional developments. During the past two years, the following entities of a protective nature and bodies serving as forums for dialogue and participation have been established through various administrative acts (annexed):

(a) Decree No. 1088 of 1993 regulates the establishment of the association of indigenous councils and/or traditional indigenous authorities. It enables indigenous authorities to associate, without losing their status as public entities of a special character, in order to carry out activities in the fields of health, education and housing and projects of a commercial or industrial nature;

(b) Decree No. 436 of 1992 created the National Indigenous Policy Council, an advisory body to the Ministry of the Interior on matters relating to policy in this field;

(c) Decree No. 1364 of 1992 contains regulations governing the Indigenous Affairs Unit, whose principal function is to support with its resources the functions of the Directorate-General for Indigenous Affairs in the Ministry of the Interior;

(d) Decree No. 2132 of 1992 reorganizes the joint financing funds of the Integrated Rural Development Programme (DRI), the Social Investment Fund (FIS) and the Territorial Entities Financing Agency (FINDETER);

(e) Decree No. 2305 of 1994 regulates the election of the representatives of organizations of peasants, indigenous groups and private traders and of producers' associations within the National Council for Agrarian Reform and Peasant Rural Development, the Executive Board of the National Institute for Agrarian Reform (INCORA) and the Executive Committee of the Peasant Organization and Training Fund;

(f) Act No. 41 of 1993 organizes the land improvement subsector and specifies its functions (participation of members of indigenous groups in the land improvement committee).

392. Other participatory bodies for consultation with the indigenous peoples and communities have also been established. These include the following:

Territorial Organization Commission (established under the Constitution);

National Planning Council;

National Council for the Human Rights of Indigenous Peoples;

Indigenous Mining Supervisory Board (COVAMI);

Inter-Agency Committee on the Health of Indigenous Peoples;

Inter-Agency Board of Education;

Aboriginal Linguistics Institute;

Inter-Agency Land Commission;

Inter-Agency Commission on the Indigenous Economy;

Inter-Agency Commission for the Urrá (hydroelectricity) Project;

Inter-Agency Commission for the Nukak-Makú People;

Departmental inter-agency indigenous affairs commissions;

Ad hoc committees to consult indigenous peoples on projects which may have an environmental impact on their territories.

393. Administrative programmes:

(a) The Programme for the Organization of Indigenous Territories lays down rules for territorial organization with a view to defining indigenous territorial entities, classifying them and establishing their basic structure;

(b) The Land Programme deals with the establishment of reservations on uncultivated land, improvement of the viability of indigenous territories through purchases of additional land from settlers, award of land titles, acquisition of land for indigenous communities, establishment of the legal status of lands held by the National Agrarian Fund, socio-economic studies for the purpose of establishing reservations, delimitation of the boundaries of existing reservations and their demarcation by means of boundary stones and fences, and studies by INCORA, undertaken in cooperation with the Directorate-General for Indigenous Affairs in the Ministry of the Interior, concerning the legal titles of indigenous reservations of colonial origin;

(c) The Natural Resources Programme comprises cooperation with the indigenous peoples for the sustainable exploitation of natural resources through the implementation of participatory educational and environmental management programmes and of specific projects for the reconstitution of resources, reforestation and restoration of impaired economic resources by natural means, including conservation of hydrographic basins and reorganization of forest areas;

(d) Coordination, among the bodies responsible for environmental management, regional corporations, Regional Councils on Economic and Social Planning (CORPES), and indigenous organizations and authorities, of necessary measures relating to community territorial organization, and programmes of assistance to traditional authorities and councils for the establishment of areas requiring special management or intended for agriculture, forestry or a combination of agriculture, forestry and stock-breading. Studies are also being undertaken on possible mechanisms for the creation of ecological barriers to cushion and protect indigenous territories in settlement areas;

(e) Studies on the socio-cultural and environmental impact of development programmes, especially those requiring infrastructure works which in any way affect indigenous peoples, their participation being guaranteed.

394. Ethnic education programmes. Ethnic education activities are based on the priorities and plans of the Government and of ethnic groups and are designed to provide an education tailored to the interests, needs and aspirations of each individual group, within an inter-cultural and bilingual framework of respect for and development of cultural identity.

395. The ethnic education plans, programmes and projects are structured around the general principles and policies of ethnic education established in the General Education Act (No. 115) of 1994, which establishes that the education provided to communities with their own cultural traditions must be tailored to their environment and productive, social and cultural processes and must respect their beliefs and traditions.

396. The Act also stipulates, inter alia, that:

(a) Teaching in ethnic groups with their own linguistic traditions shall be bilingual, in their mother tongue and Spanish;

(b) The selection of teachers shall be made in consultation with the ethnic groups, and preferably from among the members of the community;

(c) The recruitment, administration and training of teachers shall be consistent with the status of teacher and with the current special rules applicable to ethnic groups;

(d) The Ministry of Education, in conjunction with the territorial entities and the authorities and organizations of ethnic groups, shall establish special programmes for the general and special training of ethnic-education teachers or provide retraining for existing teachers in order to comply with the provisions of the law;

(e) The education programmes or projects already being carried out by the ethnic organizations shall continue, but shall be brought into line with regional and local education plans;

(f) Advisory services shall be provided, specializing in curriculum development, production of texts and materials, research programmes and training in ethnic linguistics in cooperation with the ethnic groups;

(g) The participation of international entities in the education of ethnic groups shall be subject to approval by the Ministry of Education and to the consent of the communities concerned;

(h) Contracts shall take into account the activities, principles and purposes of ethnic education and shall be executed in cooperation with the indigenous and ethnic-group authorities.

397. Some specific considerations on reservations, land acquisition and upgrading of indigenous territories. As can be seen from the book entitled "Fuero Indígena Colombiano" (Colombian Indigenous Peoples' Charter) (annex 40), reservations are entities governed by, and under the jurisdiction of, American Indian peoples, title to which is held collectively and is "inalienable, imprescriptible and not subject to seizure". This institution, which is of colonial origin, was adopted by the American Indian peoples in their struggle to obtain land and autonomy and has been enshrined in legislation stipulating that, in view of its cultural significance and the function it performs in ensuring the conservation and continued existence of indigenous peoples, it does not form part of the market. The agrarian law ordered a restructuring of the colonial reservations and a review of their legal titles (most of which were unclear or in the hands of private individuals) with a view to delimiting and consolidating the reservations. The staff of the Regional Commissions on Indigenous Affairs, in cooperation with INCORA and the Institito Geográfico Agustín Codazzi, have been processing applications for the fixing of boundaries, the constitution of reservations and the upgrading of existing reservations through land purchase and improvements.

398. The Directorate for Indigenous Affairs in the Ministry of the Interior has issued guidelines for the constitution of new reservations in accordance with the provisions of Act No. 160 of 1993. During 1993, 29 reservations were constituted under this programme with a total area of 2,284,068 hectares and a total population of some 30,982 inhabitants. During 1994 (not including cases still pending), 27 reservations were constituted with a total area of 1,571,907 hectares and a total population of 111,172 inhabitants or 29,212 families.

399. To date, a total of 26,943,603 hectares have been acquired, with a total of 315 resguardos and 12 reservas, which include some 236,683 individuals and 41,643 families.

Appendix

CASES REPORTED TO THE COMMITTEE

The following is a brief report on the current status of the following complaints submitted to the Human Rights Committee, describing the steps taken by the Colombian Government in order to give effect to the Committee's recommendations in its views concerning Nidia Erika Bautista de Arellana, Sandra Fei, William Delgado Páez and Joaquín Herrera Rubio.

1. Nidia Erika Bautista de Arellana

With regard to the case of the disappearance and death of Nidia Erika Bautista de Arellana, the Committee's views of 27 October 1995 were based on article 5 (4) of the Optional Protocol to the International Covenant on Civil and Political Rights, adopted on 16 December 1966, which stipulates that "The Committee shall forward its views to the State Party concerned and to the individual".

As to the State party's violation of articles 6 (1), 7 and 9 (1) of the International Covenant on Civil and Political Rights, the Committee concluded that:

(a) The State party is directly responsible for the disappearance and subsequent assassination of Nidia E. Bautista de Arellana;

(b) The victim was tortured after her disappearance;

(c) The State party has a duty to investigate thoroughly alleged violations of human rights, and in particular violations of the right to life, and to prosecute criminally, try and punish those held responsible for such violations. This duty applies a fortiori in cases in which the perpetrators of such violations have been identified;

(d) The abduction and subsequent detention were illegal.

The Committee's specific requests may be summarized as follows:

(a) Under article 2 (3) of the Covenant, the State party is under an obligation to provide the family of Nidia Bautista with an effective remedy, which should include damages and due protection of members of Nidia Bautista's family from any harassment;

(b) The State party is urged to expedite criminal proceedings leading to the prompt prosecution and conviction of the persons responsible for the abduction, torture and death of Nidia Bautista. The State party is further under an obligation to ensure that similar events do not occur in the future.

The Committee's conclusions are based, inter alia, on Resolutions Nos. 13 and 16 of 5 and 19 July 1995 of the Procurator for the Defence of Human Rights, Presidential Decree No. 1504 of 11 September 1995 and the judgement of the Administrative Tribunal of Cundinamarca of 22 June 1995, all of which were forwarded by Colombia to the Human Rights Committee, together with the information that the available domestic remedies had not been exhausted.

The Committee considered that the State party's previous actions did not constitute effective and appropriate remedies for Nidia Bautista's family, noting that more than seven years after the victim's disappearance no criminal proceedings had been initiated, nor had those responsible for Ms. Bautista's disappearance been identified, arrested or brought to trial. It also considered this prolongation of the legal proceedings "unreasonable".

In view of this observation and, in particular, the measures to speed up the ongoing criminal proceedings, the latter have been referred to the Office of the Attorney General's Human Rights Division, where it is currently at the investigation stage. The Division has called for evidence of various kinds, including the taking of statements under oath, judicial inspections of criminal court records with the aim of gathering evidence, and judicial inspection of sites or premises where investigation is needed in order to verify testimony given in connection with the case. Furthermore, in view of the threats uttered against close relatives of Nidia Bautista, the Office of the Attorney General, which has jurisdiction in such cases, has been called upon to provide them with the necessary protection against assault.

The State has also taken the following steps to ensure that there is no recurrence of events similar to the disappearance and subsequent murder of Nidia Erika Bautista de Arellana.

The Government of President Ernesto Samper Pizano is working hard and with great determination on the preparation of a new bill defining the enforced disappearance of persons as an offence under Colombia's domestic criminal law; the bill will be submitted to the current legislature, an earlier draft having been rejected on the grounds of unconstitutionality during the administration of President Cesar Gaviria Trujillo. In the draft under preparation, the question of the jurisdiction of the military courts depends on the decisions taken by the Government on the draft Military Criminal Code with regard to the definition of offences committed in connection with military duty.

The Colombian Government signed the Inter-American Convention on the Forced Disappearance of Persons in Belem de Pará, Brazil, in 1994. The bill calling for its ratification was submitted by the Gaviria administration. After the change of government, the Minister for Foreign Affairs, Rodrigo Pardo Garcia Peña, was called upon to address the First Committee of the House in order to give his views on approval of the Convention and stated that, in his opinion, the Convention should be approved without reservations and that the Constitutional Court would verify its constitutionality in due course. However, despite this willingness on the part of the Government, the opponents in the Senate's Second Committee voted against the bill, which was therefore shelved.

It is also important to note, inter alia, the creation by the Attorney General's Office of the Human Rights Division, which is responsible for investigating serious violations of human rights and humanitarian law and which, as stated above, is currently handling proceedings in relation to Ms. Bautista's disappearance and death.

2. Sandra Fei

With regard to this case, the Committee, in its views adopted on 4 April 1995, said that the State party was under an obligation to provide Mrs. Fei with an effective remedy, which would entail guaranteeing her regular access to her daughters, and to ensure that the terms of the judgements in her favour were complied with.

Under Colombian law, certain procedures must be initiated at the request of the interested party in order to secure compliance with decisions handed down by a judge. The law also provides for penalties to be imposed on those who fail to comply with such decisions.

In particular, criminal law defines evasion of a judicial decision, which occurs when a person in any way fails to comply with an obligation imposed by such a decision, as criminal conduct. It should be noted that one of the functions of the Office of the Attorney General, is to monitor compliance with judicial decisions, which, in the final analysis, constitute the nation's institutional system. The Office also performs a police function, which is crystallized in the disciplinary and punitive powers exercised by its personnel.

When the Attorney General is informed of a systematic failure to comply with a judicial decision, he is required to initiate the relevant legal proceedings for the purpose of ensuring compliance with that decision. Furthermore, if there has been an unjustified delay in dealing with an application, he is responsible for initiating appropriate disciplinary proceedings.

Colombian civil legislation includes another mechanism which is worthy of note since it constitutes an alternative instrument for ensuring compliance with the obligations imposed by a judicial decision. It is provided for in article 500 of the Code of Civil Procedure, which establishes the steps to be taken in cases involving an obligation to take certain action. In this case, it constitutes an appropriate mechanism under civil law to order the offender to comply with the judicial decision.

After all the previous remedies have been exhausted, the police are authorized to intervene in order to ensure compliance with the orders and decisions issued by judges in accordance with the provisions of article 29 (a) of the National Police Code.

It should also be noted that the Convention on the Civil Aspects of International Child Abduction, signed at the Hague on 25 October 1980, one of whose goals is to guarantee protection of visitation rights, was approved by Congress through Act No. 173 of 1994 and acceded to on 13 December 1995; it entered into force on 1 March 1996.

The Ministry of Foreign Affairs has requested the Office of the Procurator for Children and the Family to inform it of the results of the latter's study and analysis of the case, as mentioned in paragraph 6 of the most recent note sent to the Committee. The Office replied that it was continuing to study the matter with a view to issuing an opinion.

3. William Delgado Páez

With regard to the views expressed by the Human Rights Committee on 12 July 1990 concerning communication No. 195/1985 submitted to the Committee by Mr. William Delgado Páez under the Optional Protocol to the International Covenant on Civil and Political Rights, Colombia has taken the following steps.

Paragraph 6 of the document containing the Committee's views on the case states that the Committee considers that the facts of the communication disclose violations of articles 9 (1) and 25 (c) of the Covenant.

The finding of a violation of article 9 (1), which provides that everyone has the right to liberty and security of person, is based on the alleged threats and assaults to which the author claims to have been subjected and on the murder of a female colleague. Since the State did not inform the Committee otherwise, the Committee considered as correct the allegations that the threats were known and that nothing was done.

With regard to the alleged threats, as the Committee says in its views, the State denied that Mr. Delgado's rights under the Covenant had been violated, a denial which implicitly included any such threats. No explicit reference was made thereto because, in the author's complaint to the Committee, the allegations concerning the character of Monsignor Marcelino Canyes, the charges filed against the author for the alleged theft, the alleged irregularities in the functioning of the Regional Education Office and its actions *vis-à-vis* a number of national authorities, all of which concern the first points mentioned, appeared to be relevant.

The alleged threats against the author are only alluded to in a general way in the last paragraph of the complaint. For this reason, the State, acting in good faith, concentrated on the aspects of the case which appeared fundamental. Nevertheless, in view of the Committee's decision, the Administrative Security Department (DAS) began an exhaustive investigation in order to determine whether Mr. Delgado had informed the competent authorities of the alleged threats.

As a result of this investigation, it was established that Mr. Delgado did not report any threats to the competent local or State authorities. This means that the author did not have recourse to the competent domestic authorities. While judicial officers have a duty to initiate criminal proceedings *ex officio*, under Colombian law - as in the criminal law of most countries - such proceedings must be triggered in order that an investigation of the case may be initiated and carried out. Unless the competent authorities are aware of offences committed against legally protected assets such as life or physical integrity, they can hardly be expected to take steps to restore or protect a right that they do not know has been violated.

Moreover, with regard to the murder of María Rubiela Valencia, which the author claims was linked to her work as a teacher and deliberately associates with his own case in order to lend credibility to the view that his life was in danger, the judicial authorities' investigations into that case have established that the motive for Ms. Valencia's death was vengeance of a personal, rather than political, nature. Furthermore, at the time of the events, there were no problems of ideological persecution of the kind alleged by the claimant in the region in question.

With regard to the violation of article 25 (c), the Committee stated in paragraph 5.9 of its views that although the requirement by the Church authorities that Mr. Delgado teach the Catholic religion in its traditional form did not violate article 19, the author claimed that he continued to be harassed while teaching non-religious subjects and that, since that constant harassment and the threats against his person had made his continuation in public service teaching impossible, the State had violated the right of every citizen to have access, on general terms of equality, to public service in his country.

The Committee considered that the alleged persecution of the author after he had ceased to teach religion was another basis for the finding of a violation of article 25 (c) of the Covenant. In this regard, the Colombian Government deemed it necessary to make specific reference to the fact that Mr. Delgado, both before and after he ceased to teach religion, had been able to take steps under criminal law and in the administrative sphere, cleverly manipulating the normal procedures of both.

The Colombian Government, therefore, did not agree that Mr. Delgado had been the victim of any persecution, either before or after ceasing to teach religion, or that his rights had been violated. On the contrary, the authorities had acted in accordance with the law, had respected the guarantees of due process and fundamental rights, and had been available at all times to Mr. Delgado, as to any other citizen, without any distinction or discrimination.

Mr. Delgado resigned from his post, but he cannot be said to have done so as a result of persecution. In a note sent to the Communications Branch of the Centre for Human Rights on 14 September 1987, he claimed to have been the victim of an attack, for which he had no evidence, although he clearly and emphatically stated that it was for this reason that he found it necessary to leave the country. The Government of Colombia, in its turn, informed the Committee in a note that it considered that cases such as that of William Eduardo Delagado Páez distorted the noble, objective and effective procedures of the International Covenant on Civil and Political Rights. Nevertheless, the Government, aware that there have been cases of genuine threats against teachers, has taken steps to guarantee their lives and physical integrity and to provide them with the necessary financial resources for their subsistence.

For example, by Decision No. 15,316 of 1 November 1990, the Ministry of Education established a special procedure for the transfer of native-born and naturalized Colombian teachers who are threatened. Furthermore, on 4 December 1990, the Colombian Minister of Education, Mr. Cesar Manuel Garcia Niño, issued directives with a view to resolving the problem of non-payment of the salaries of teachers who had been obliged to leave their posts as a result of threats to their lives and physical integrity prior to the adoption of the above-mentioned Decision.

Colombia also takes pride in the existence of an administrative court, to which any citizen who believes he has suffered harm as a result of action on the part of the State may have recourse.

4. Joaquín Herrera Rubio

Paragraph 11 of the Human Rights Committee's views of 2 November 1987 concerning communication No. 161/1983, submitted by Mr. Joaquín Herrera Rubio, states that the Committee is of the view that the facts reveal violations of articles 6, 7 and 10 (1) of the Covenant and that it is, accordingly, of the view that the State party is under an obligation to take effective measures to remedy the violations that Mr. Herrera Rubio has suffered, further to investigate said violations and to take steps to ensure that similar violations do not occur in the future.

The Government of Colombia has taken far-reaching measures in furtherance of human rights, chief among which is the constitutional reform which raised observance of fundamental human rights and the appropriate mechanisms for their protection, to the highest rank of law. The Government is both conscious of, and concerned by, the need to carry out the necessary investigations in concrete cases involving violations of those rights and, to that end, as has already been mentioned, the Human Rights Division has been set up within the Office of the Attorney General to conduct investigations into serious violations of human rights and international humanitarian law.

The case of the Herrera family is no exception. The progress of the investigation into that case has been closely monitored by the public order courts and, subsequently, the regional courts.

In this case, once again, the disappearance of José Joaquín Herrera and Ema Rubio was not reported to the judicial authorities. Consequently, the State had no knowledge of their disappearance and no opportunity to take the necessary measures to locate them. The Government of Colombia therefore considers that it is inappropriate to castigate the State for not taking action with regard to an event of which it was not aware. However, once the bodies of the victims had been found, the appropriate criminal and disciplinary/administrative investigations were automatically initiated, prompted, in the latter case, by the existence of reports concerning the alleged involvement of members of the armed services in the offence.

Colombian law on criminal procedure authorizes victims or their heirs to participate actively in criminal proceedings through the so-called criminal indemnification action in order to claim compensation for the injury caused by the offence. Thus, the claimant can request the taking of evidence for the purpose of demonstrating that the act under investigation took place and proving the identities of those responsible and their accomplices, if any, the responsibility of such persons, and the nature and degree of injury incurred. The relatives of the victims did not make use of this remedy, which would have allowed them to seek to obtain evidence against those who had committed or participated in the crime, establish those persons' criminal responsibility, intervene in the pre-trial proceedings or request compensation for the injury incurred.

Thus, the events in question are still being investigated within the framework of the new areas of jurisdiction established under the new body set up within the Attorney General's Office, using its investigative machinery, as stated above.

The Government of Colombia has informed the Committee that it finds it regrettable that in the Herrera Rubio case, as in others brought before the Committee, the claimants have had recourse to an international body without having exhausted domestic procedure, despite the fact that Colombia's system of administrative litigation has a long-standing reputation for effectiveness in Latin America.

List of annexes

1. Constitution of Colombia, 1991.

2. Office of the President of the Republic of Colombia, "A New Policy for Life - Human Rights", Santafé de Bogotá, Colombia, 9 September 1991.

3. Act No. 188 of 1995 approving the National Development Plan - The "Social Leap".

4. Decree No. 1290 of 1995 establishing the Commission for the analysis of and advisory assistance in implementing recommendations of international human rights bodies.

5. Report of the 1290 Committee on compliance with the recommendations of the intergovernmental human rights bodies, Preliminary draft prepared in January and February 1996.

6. Final report of the Commission to Investigate the Violence in Trujillo - IACHR case 11,007, Santafé de Bogotá, Colombia, January 1995.

7. Act No. 199 of 22 July 1991 changing the name of the Ministry of the Interior (Ministerio de Gobierno replaced by Ministerio del Interior).

8. CONPES document No. 2804 of 13 September 1994 - National Programme for the General Welfare of Persons Displaced by Violence.

9. Ministry of Defence Directive No. 24 of 5 July 1995.

10. Decree No. 1533 of 1994 establishing the National Human Rights Commission.

11. Republic of Colombia - Attorney General's Office, "Fourth Annual Report on Human Rights", Santafé de Bogotá, Colombia, December 1995.

12. Act No. 137 of 2 June 1994, Statutory Act on States of Emergency.

13. Republic of Colombia - Constitutional Court, Decision D-179 of 13 April 1994 on the enforceability of Act No. 137 of 1994.

14. Decree No. 265 of 6 February 1995 establishing the Drafting Committee on the Draft Military Criminal Code.

15. National Economic and Social Policy Council (CONPES) documents Nos. 2687 and 2794.

16. Acts No. 3 and 5 of 1992, Congressional Regulations.

17. Act No. 130 of 1994 (Statutory Act on Political Parties and Movements).

18. Act No. 131 of 1994 regulating voting for political programmes.

19. Act No. 134 of 1994 on mechanisms for popular participation. Annex 19 bis: Decree No. 2629 of 1994 creating the Citizen Participation Fund under the Ministry of the Interior.

20. Act No. 24 of 15 December 1992 regulating the organization and functioning of the Office of the Ombudsman.

21. Act No. 40 of 19 January 1993 approving the National Statute against Abduction.

22. Decree No. 1405 of 1 September 1995 establishing the Presidential Programme to Combat the Offence of Abduction and Other Offences against Personal Liberty.

23. Act No. 62 of 1993 restructuring the National Police.

24. Act No. 241 of 1995 extending the period of validity of Act No. 104 of 1993 (Civil Coexistence Act).

25. Act No. 30 of 1993 (General Higher Education Act).

26. Act No. 115 of 1994 (General Education Act).

27. Decrees Nos. 2591 of 1991 and 306 of 1992 regulating the remedy of protection.

27 bis. Republic of Colombia, Ministry of Justice and Law, Incidencia social de la acción de tutela, Document Series 22, Ministry of Justice, Santafé de Bogotá, Colombia, February 1996.

28. Act No. 82 of 1993 (Act on Support for Female Heads of Household).

29. Office of the President of the Republic of Colombia - Department of Social Policy, "National Report of Colombia, prepared for the Fourth World Conference on Women - Beijing 1995", Santafé de Bogotá, Colombia, September 1995.

30. Act No 11 of 1988 - Special social security regime for female employees in domestic service.

31. Act No. 50 of 1990 on maternity protection.

32. Decree No. 1398 of 1990 establishing the Committee for Coordination and Monitoring of Policies to Combat Discrimination.

33. Decree No. 2055 of 30 August 1994 establishing the Advisory Commission for Equality and Participation of Women.

34. Document No. 2726 of 30 August 1994 establishing the Women and Gender Secretariat within the Office of the Presidential Adviser for Social Policy and the Gender Unit within the Ministry of the Environment.

35. Decree No. 2241 of 1993 on immigration, issuing of visas and registration of foreigners.

36. Act No. 270 of 1996 (Statutory Act on the Administration of Justice).

37. Act No. 133 of 1994 (Statutory Act on Freedom of Religion).

38. Constitutional Court Decision C-088 of 3 March 1994 on the Freedom of Religion Bill, subsequently proclaimed as Act No. 133 of 1994.

39. Republic of Colombia, Ministry of the Interior, Commission on the Reform of the Political Parties, Technical memorandum, Santafé de Bogotá, Colombia, January 1996.

40. Colombian Indigenous Peoples' Charter.
